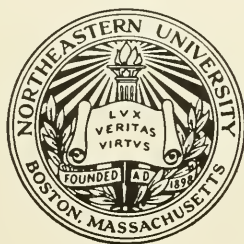


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HEARINGS REGARDING H.R. 16742: RESTRAINTS ON TRAVEL TO HOSTILE AREAS

HEARINGS BEFORE THE COMMITTEE ON INTERNAL SECURITY HOUSE OF REPRESENTATIVES NINETY-SECOND CONGRESS SECOND SESSION

SEPTEMBER 19 AND 25, 1972
(INCLUDING INDEX)

Printed for the use of the
Committee on Internal Security



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(II)

CONTENTS

TESTIMONY

September 19, 1972:	
A. William Olson, Assistant Attorney General, Internal Security Division, Department of Justice.....	Page 7542
Robert Johnson, Deputy Director and Chief Counsel, Passport Office, Department of State.....	7572
Psychological Warfare Analyses by Edward Hunter, Francis M. Watson, Jr., and Gen. S. L. A. Marshall.....	7581
September 25, 1972:	
Congressman Charles E. Bennett.....	7608
Congressman G. V. (Sonny) Montgomery.....	7610
A. William Olson, Assistant Attorney General, Internal Security Division, Department of Justice.....	7613

STATEMENTS

Congressman Carleton J. King.....	7615
Congressman William J. Scherle.....	7617
Congressman Louis Frey, Jr.....	7617
David M. Abshire, Assistant Secretary of State for Congressional Relations.....	7620
Charles E. Rice, Professor, Notre Dame University Law School.....	7622
Appendix:	
Transmittal letter and Memorandum of Law Concerning Treason and Sedition from Department of Justice.....	7625
Chairman Ichord's remarks in Congressional Record.....	7633
July Travel Itinerary of Jane Fonda.....	7639
List of Radio Hanoi broadcasts by Jane Fonda.....	7642
Texts of Fonda's broadcasts to U.S. servicemen.....	7644
Theme Analysis by Dr. Joseph E. Thach of Fonda broadcasts from Hanoi.....	7672
Staff compilation of relevant statements by Fonda prior to Hanoi travel.....	7679
Statement of staff efforts to interview Fonda.....	7681
Compilation of broadcasts previously made over Radio Hanoi by other U.S. citizens.....	7682
Copies of reported cases:	
<i>Zemel v. Rusk</i> , 381 U.S. 1 (1965).....	7695
<i>U.S. v. Laub</i> , 385 U.S. 475 (1966).....	7735
<i>Lynd v. Rusk</i> , 389 F. 2d 940 (1967).....	7751
Index.....	i

The House Committee on Internal Security is a standing committee of the House of Representatives, constituted as such by the rules of the House, adopted pursuant to Article I, section 5, of the Constitution of the United States which authorizes the House to determine the rules of its proceedings.

RULES ADOPTED BY THE 92D CONGRESS

HOUSE RESOLUTION 5, JANUARY 22, 1971.

RESOLUTION

Resolved, That the Rules of the House of Representatives of the Ninety-first Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, and the Legislative Reorganization Act of 1970, be, and they are hereby adopted as the Rules of the House of Representatives of the Ninety-second Congress * * *

* * * * *

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

* * * * *

(k) Committee on Internal Security, to consist of nine Members.

* * * * *

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * *

11. Committee on Internal Security.

(a) Communist and other subversive activities affecting the internal security of the United States.

(b) The Committee on Internal Security, acting as a whole or by subcommittee, is authorized to make investigations from time to time of (1) the extent, character, objectives, and activities within the United States of organizations or groups, whether of foreign or domestic origin, their members, agents, and affiliates, which seek to establish, or assist in the establishment of, a totalitarian dictatorship within the United States, or to overthrow or alter, or assist in the overthrow or alteration of, the form of government of the United States or of any State thereof, by force, violence, treachery, espionage, sabotage, insurrection, or any unlawful means, (2) the extent, character, objectives, and activities within the United States of organizations or groups, their members, agents, and affiliates, which incite or employ acts of force, violence, terrorism, or any unlawful means, to obstruct or oppose the lawful authority of the Government of the United States in the execution of any law or policy affecting the internal security of the United States, and (3) all other questions, including the administration and execution of any law of the United States, or any portion of law, relating to the foregoing that would aid the Congress or any committee of the House in any necessary remedial legislation.

The Committee on Internal Security shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Internal Security, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * *

28. (a) In order to assist the House in—

(1) its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate,

each standing committee shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.

* * * * *

HEARINGS REGARDING H.R. 16742: RESTRAINTS ON TRAVEL TO HOSTILE AREAS

TUESDAY, SEPTEMBER 19, 1972

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

EXECUTIVE SESSION ¹

The Committee on Internal Security met, pursuant to call, at 10:05 a.m., in room 311, Cannon House Office Building, Washington, D.C., Richard H. Ichord, chairman, presiding.

Committee members present: Representatives Richard H. Ichord of Missouri, Richardson Preyer of North Carolina, Robert F. Drinan of Massachusetts, Roger H. Zion of Indiana, and Fletcher Thompson of Georgia.

Staff members present: Donald G. Sanders, chief counsel; Alfred M. Nittle, legislative counsel; Daniel R. Ferry, assistant counsel; and DeWitt White, minority legal counsel.

The CHAIRMAN. The committee will come to order.

Without objection, the meeting will be held in executive session.

As ordered by the committee on August 10, the Chair directed a letter to Attorney General Kleindienst, asking that, in the event that the Attorney General determines that the travel of Jane Fonda did not constitute sedition or treason, the Department of Justice furnish a report to the committee on the matter, together with recommendations of action that the Congress should take or, in the alternative, a representative of the Department appear before the committee.

This letter was acknowledged on August 22.

On September 13 Mr. William Olson advised the Chair that the Fonda matter was still under consideration and that it would be inappropriate under the circumstances for the Department to comment upon a pending matter and therefore a report could not be furnished.

On September 14, by letter to Mr. Kleindienst, the Chair asked that a representative meet at this executive meeting today.

Without objection, I would direct that the correspondence referred to be placed in the record at this point.

(The letters referred to follow:)

AUGUST 10, 1972.

HON. RICHARD G. KLEINDIENST,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The Committee on Internal Security met this morning in executive session to consider a request that a subpoena be issued to

¹ Released by the committee Sept. 25, 1972, and ordered to be printed.

require Jane Fonda to appear before the Committee in regard to her travel to North Vietnam and radio broadcasts to U.S. military forces during July 1972. During the meeting a number of reasons were expressed as a basis for opposition to the issuance of a subpoena. Important factors in the ultimate determination of the Committee were that the facts seemed to be already rather well-known, that the matter was under study by the Department of Justice and Fonda would be entitled to the full protection of the Fifth Amendment, that any such hearing might work to the prejudice of the Government in the event prosecution is undertaken and that the Committee's overriding interest is not in what additional information might be secured from Fonda, but rather in any insufficiency in the terms of the law or in its enforcement.

I am sure that you recognize the pernicious nature of Miss Fonda's statements to our servicemen, and the seriousness with which nearly all Members of Congress view her conduct. Although it might be fairly said that public support for American involvement in the Vietnam conflict is steadily declining, such aid and comfort to a nation with which we are engaged in hostilities is nevertheless condemned by the public. But whatever political or public reaction might obtain under the circumstances, I am sure you agree that the Department of Justice has a most solemn obligation to engage the full weight of the law against conduct which the Congress has made criminally punishable.

The Committee has reviewed the treason, sedition and other relevant statutes. It has also been informed of Fonda's travel itinerary, and has studied the transcripts of her broadcasts while recently in Hanoi. It is not difficult to perceive why a cry of treason has been raised. But if the burden of proof is too great for treason, would not a prima facie case exist under Section 2387 of Title 18, United States Code or even Section 2388, notwithstanding the jurisdictional limitation?

In discharging its responsibility to the Congress to insure that statutes within its oversight jurisdiction are being duly enforced by the Executive Branch, the Committee resolved that the staff investigation of Fonda's activities will continue, and in the event the Justice Department determines that the broadcasts of Jane Fonda from Hanoi during July 1972 do not constitute treason or sedition, or that her conduct cannot be reached by existing statute for any other reason, then the Department is requested to furnish a report to the Committee with recommendations for legislation which would be effective to impose criminal sanctions under similar circumstances in the future. Desiring to resolve the questions at an early date, but hoping to avoid an unreasonable burden upon the Department, the Committee voted to request that the report be submitted by September 14, or in the alternative, that a representative of the Department appear before the Committee on that date.

Your cooperation and assistance in providing an analysis of the federal criminal law vis-a-vis the recent conduct of Jane Fonda will indeed be appreciated. Would you please advise me as soon as possible whether the Department will furnish a report on or before the above date or will provide for the appearance of a representative so that arrangements can be made for a meeting of the Committee.

Sincerely,

RICHARD H. ICHORD, *Chairman.*

AUGUST 22, 1972.

HON. RICHARD H. ICHORD,
*Chairman, Committee on Internal Security,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of August 10, 1972 to the Attorney General concerning the recent activities of Jane Fonda in North Vietnam.

You requested that by September 14, 1972 the Department furnish the Committee with a report as to whether the evidence is sufficient to charge Miss Fonda with a violation of the sedition, treason or other statutes, or in the alternative, that a representative of the Department appear before the Committee on that date.

As you know, the Department is currently reviewing the texts of statements allegedly made by Miss Fonda and broadcast over Radio Hanoi. We are still re-

ceiving such statements. However, in the event our review of this material is completed on or before September 14, 1972, we will be pleased to furnish you with a report at that time.

Sincerely,

A. WILLIAM OLSON,
Assistant Attorney General.

DEPARTMENT OF JUSTICE,
INTERNAL SECURITY DIVISION,
Washington, D.C.,
September 13, 1972.

HON. RICHARD H. ICHORD,
Chairman, Committee on Internal Security,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In my letter of August 22, 1972, regarding Jane Fonda you were advised that in the event our review of this matter is completed before September 14, 1972, we would be pleased to furnish you with a report by that date.

We have since received, and are continuing to receive, material and information which is pertinent to our review of the activities of Miss Fonda. Since this matter is still under active consideration in the Department, I know you will appreciate that it would be inappropriate, and contrary to long standing Department policy, to comment upon a pending matter.

I regret, therefore, that in these circumstances, I cannot furnish you the report at this time. However, I shall contact you further when our review is completed and a decision is reached in this matter.

Sincerely,

A. WILLIAM OLSON,
Assistant Attorney General.

SEPTEMBER 14, 1972.

HON. RICHARD G. KLEINDIENST,
Attorney General of the United States,
Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: I have received the letter of Assistant Attorney General A. William Olson dated September 13, 1972 in regard to Jane Fonda. It was with regret that I read of the declination of the Department of Justice to furnish a report to the Committee on Internal Security at this time.

While it is gratifying to learn that the Department of Justice is considering the ramifications of the activities of Miss Fonda, it is at the same time disappointing that your review cannot be completed more promptly. Certainly there are understandable difficulties of proof but the views of the Department would be helpful to the Committee in evaluating whether there is a necessity for new legislation, and if so in formulating its terms.

In my letter to you of August 10 I related the Committee's desire for a report by September 14, or in the alternative that a representative of the Department appear before the Committee on that date. Inasmuch as no report has been furnished the Committee would be pleased to receive your oral views, or your official representative, in an executive meeting which I am scheduling for 10:00 a.m. on Tuesday, September 19, 1972 in Room 311 of the Cannon House Office Building.

I hope this will be convenient, and I am looking forward to a discussion Tuesday which will produce a solution to the problems resulting from activities such as those engaged in by Miss Fonda.

Sincerely,

RICHARD H. ICHORD, *Chairman.*

The CHAIRMAN. Mr. William Olson, Assistant Attorney General in charge of internal security, is with us today in response to my letter of September 10.

Mr. Olson, it is a pleasure to welcome you to the committee. You are accompanied by Mr. Maroney. Do you have a prepared statement, sir?

Mr. OLSON. Yes, I do, Mr. Chairman.

The CHAIRMAN. Without objection, then, the gentleman will be recognized to proceed with his statement.

(Biographical data furnished by Mr. Olson follows:)

A. WILLIAM OLSON

Born. Portland, Oregon; July 3, 1922.

Education. Elementary, Lebanon, Oregon; Secondary, Camas, Washington; College, University of Washington; U.C.L.A., B.A., 1947; Law School, University of Southern California, J.D., 1950.

Military service. U.S. Army, 1943 to 1946, Staff Sergeant, Rifle Company, 32nd Division, South Pacific; Second Lieutenant, Military Intelligence Reserve, 1948 to 1953.

Work experience. Commenced private practice of law in Pasadena, California, January 1951; Associated with Joslyn & Joslyn, 1951 to 1952; Associated with Barrick & Wright, 1952 to 1953; Partner, Barrick & Olson, 1953 to 1958; Partner, Barrick, Poole & Olson, 1958 to 1971; Department of Justice, January 1971 to present.

Organizations. Admitted to the State Bar of California, January 1951; Member of the Pasadena, Los Angeles County and American Bar Associations; admitted to the Bar of the United States Supreme Court.

Served as president, Pasadena Junior Barristers, 1955; District Commissioner, San Gabriel Valley Boy Scouts of America, 1956; Board of Governors and Vice President, University Club of Pasadena, 1956 to 1958; Board of Trustees, Executive Committee, Pasadena Playhouse Association, 1965 to 1967; member, Pasadena Kiwanis Club and Legal Aid Society of Pasadena.

Honors. Purple Shield, underclassman's scholastic and honorary, University of Washington; Eagle Scout.

Family. Patricia Ann Custer, 1948. Two sons: Scott William and Robert Kirk.

TESTIMONY OF A. WILLIAM OLSON, ASSISTANT ATTORNEY GENERAL, INTERNAL SECURITY DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY KEVIN T. MARONEY, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. OLSON. Mr. Chairman, I am appearing today in response to your request that the Attorney General or his official representative appear before the committee for the purpose of discussing matters relating to the treason and sedition statutes. The Logan Act is also relevant to a consideration of this matter.

As I informed the committee in my letter of September 13, 1972, it would be inappropriate for me to comment on the reported activities of Jane Fonda in North Vietnam since that is a matter presently under active consideration in the Department. I would like again to make that point clear.

The Federal Bureau of Investigation has been requested to conduct an investigation regarding Miss Fonda's activities, and, of necessity, we cannot complete our review or come to a prosecutive determination until all investigation is concluded. To comment on this matter at this time would not only be contrary to longstanding policy of the Department, but could very well prejudice any possible prosecution, if such should eventuate. (See *Delaney v. United States*, 199 F. 2d 107 (1st Cir. 1952).)

I regret therefore that I cannot testify concerning any of the facts regarding Miss Fonda's activities in North Vietnam, nor can I answer any hypothetical questions which might in any way relate to that subject matter.

Mr. Sanders, of your staff, has been furnished with a written report discussing the law of treason and sedition.¹ I think it might at this time be appropriate to review the provisions of these statutes and briefly discuss their application.

The treason statute, 18 U.S.C. 2381, provides that whoever levies war against the United States or adheres to their enemies, giving them aid and comfort, is guilty of treason. Additionally, Section III, Article 3 of the Constitution provides that no person shall be convicted of treason except on the testimony of two witnesses to the same overt act or a confession in open court.

Treason is a breach of allegiance to the Government, and as an offense against the state, it has always been regarded as the most serious and heinous of all crimes.

In early English law, "treason" was given a very broad scope and became an instrument of oppressing anyone who opposed the will of the King. However, to avoid such evils, the framers of our Federal Constitution, although resorting to some of the terms of the old English statute of Edward III, commonly known as the Statute of Treason, made great effort to define carefully the offense of treason, specifically limiting its scope. Significantly, the principal discussion in connection with the drafting of the treason clause of the Federal Constitution centered around three aspects; namely, the two-witness requirement, the concept of an overt act, and the concept of "aiding and comforting the enemy."

The basic law of treason was not written into the Constitution by accident. It was framed and put there by men who had been taught by experience and by history to fear the abuse of the treason charge almost as much as they feared treason itself. Treason under English law had become so broad and loose as to make treason consist not only of a breach of allegiance to the Crown or adherence to its enemies, but to include the mere utterance of opinions. Many of our Colonies had enacted similar broad treason statutes. None of the framers intended to withdraw the treason offense from use as an effective instrument against treachery that would aid external enemies nor did they appear reluctant to punish as treason any genuine breach of allegiance to one's government. But the thing they did want to prevent was legislation in later years becoming so broad as to make treason consist of the mere utterance of an opinion.

The proceedings of the Constitutional Convention of 1787 reflect that Charles Pinckney proposed that Congress be given the power to declare what should be treason against the United States. However, the "Committee on Detail" reported a draft constitution which left no latitude to create new treasons and, after thorough and able discussion, this was the provision adopted.

The framers combined all known protection against the extension of treason and wrote into the organic act a prohibition of legislative or judicial creations of treason. In doing so they seemed to have been concerned by two kinds of dangers: (1) the suppression by lawful authority of peaceful political opposition, and (2) the conviction of the innocent as a result of perjury, passion, or inadequate evidence.

¹ For transmittal letter and Memorandum of Law, see appendix, pp. 7625-7632.

To correct the first they limited treason to levying war or adhering to the enemies of the United States, giving them aid and comfort, thus making it impossible for lesser offenses to become treason. To correct the second and safeguard the procedures incident to the trial of those persons charged with treason, they provided that no one should be convicted except upon the testimony of two witnesses to the same overt act or upon confession in open court.

(At this point Mr. Drinan entered the hearing room.)

Mr. OLSON. The crime of treason is unique among criminal statutes as regards the stringent requirements of proof which it places upon the prosecution of such cases. The Government is required to allege specific overt acts of treason upon the part of the accused and to prove each of these acts by the testimony of two eyewitnesses to the particular act. In *United States v. Robinson*, 1919, 259 F. 685, Judge Learned Hand wrote with regard to treason, "conviction cannot be had on the testimony of one witness together with circumstantial evidence, though it was well nigh conclusive." In the Supreme Court's decision in *Cramer v. United States*, 325 U.S. 1, Justice Jackson presented an exhaustive treatise on the history of the treason statute to evidence the necessity for a narrow and restrictive interpretation of the statute. He stated:

Thus the crime of treason consists of two elements: adherence to the enemy; and rendering him aid and comfort. A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to this country's policy or interest, but so long as he commits no act of aid and comfort to the enemy, there is no treason.

Where there is no evidence that a person has "levied war" against the United States, the basic elements which must be established to prove treason are:

1. allegiance to the United States
2. existence of an "enemy"
3. aid and comfort to the "enemy"
4. intent to betray the United States [adherence to the enemy]

A country with which the United States is engaged in open hostility presumably would qualify as an "enemy." No case has decided the specific question whether "enemy" is dependent upon a declared war. However, in two cases, *United States v. Greathouse*, 4 Sawy. 457, 26 Fed. Cas. No. 15, 254 (C.C., D. Cal. 1863) and *Stephan v. United States*, 133 F. 2d 87 (6th Cir. 1943) *cert. denied* 318 U.S. 781, the courts defined the term "enemy" as used in the treason laws as applying to subjects of foreign powers in a state of open hostility with the United States. It should be noted, though, that in *Greathouse* the "hostility" was levying war against the United States and in *Stephan* there was actually a state of declared war.

Most of the World War II treason cases involving aid and comfort to an enemy were based on "broadcasting." The principal cases are:

Chandler v. United States, 171 F. 2d 921 (1st Cir. 1948), *cert. denied* 336 U.S. 918

Best v. United States, 184 F. 2d 131 (1st Cir. 1950), *cert. denied* 340 U.S. 939.

Gillars v. United States ("Axis Sally"), 182 F. 2d 962 (C.A.D.C. 1950)

D'Aquino v. United States ("Tokyo Rose"), 192 F. 2d 338 (9th Cir. 1951), *cert. denied* 343 U.S. 935.

Burgman v. United States, 188 F. 2d 637 (C.A.D.C. 1950), *cert. denied* 342 U.S. 838.

Also significant is *Cramer v. United States*, 325 U.S. 1, which involved aid and comfort to a German national in the United States and which has important rulings on the "two witness rule."

The treasonous language used in the broadcasts in these World War II cases follows a similar pattern in that it expressed the superiority of the Axis Powers; that the efforts of the United States and Allied Forces were hopeless; that the cause of the Axis Powers was correct and justified; and generally that the statements were designed to affect adversely the morale of the U.S. servicemen to the point of making them want to stop fighting. The courts said that such statements gave aid and comfort to the enemy.

There are some important factors in these World War II cases bearing on intent to adhere to the enemy. In each of the cases the defendants were voluntary, *paid employees* of the "enemy" who were *hired* for the purpose of dispensing (i.e., broadcasting) anti-U.S. propaganda to the military and who remained at their jobs for most, or a considerable part, of the war. Their adherence to the enemy, their intent to betray, was knowing, willful, and clear. It is made clear in the cited World War II cases that when broadcasting is charged as the overt act, the two-witness rule means two witnesses who saw the act of broadcasting and heard the words spoken by the defendant. Circumstantial evidence is not admissible to prove this point. See also, *Cramer v. United States*, *supra*.

The sedition statute, 18 U.S.C. 2387, provides, among other things, that:

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; * * *

* * * * *

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both * * *.

Section 2387 is applicable during times of both peace and war, *Dunne v. United States*, 138 F. 2d 137 (9th Cir., 1943).

In view of the first amendment rights of freedom of speech and of the press, the courts have imposed stringent standards of proof to establish a violation of the sedition statute. When the activity consists of written or spoken words, it is necessary to meet the test laid down by the Supreme Court in *Schenck v. United States*, 249 U.S. 47. There the Court said that:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.

The clear and present danger doctrine has through the years been imposed as a guide in determining the constitutionality of restrictions on the right of free speech and free press. Under that doctrine, freedom of speech and of the free press is susceptible of restric-

tion when, and only when, necessary to prevent grave and immediate danger to interests which the Government may lawfully protect. The clear and present danger test of the Schenck case has afforded from 1919 to the present date a practical guide in various lines of cases in which the scope of constitutional protections of freedom of expression was in issue. Moreover, it has provided a so-called working principle that speech could not constitutionally be restricted unless there would result from it an imminent, i.e., close at hand, substantive evil.

In *Hartzel v. United States*, 322 U.S. 680, a World War II case involving dissemination in the U.S. of pamphlets denouncing certain aspects of the war, the Supreme Court established that two major elements are necessary to constitute an offense under the sedition statute. The first, a subjective element, a specific intent to deliberately and with specific purpose do the acts proscribed by Congress; and the second, an objective element, "consisting of a clear and present danger that the activities in question will bring about the substantive evils which Congress has a right to prevent." This requisite specific intent, said the Court, "may be proved not only by the language actually used in the statements or writings themselves but also by the circumstances surrounding their preparation and dissemination."

In determining whether utterances are seditious, the words used must have the capability and the tendency to cause the prohibited act (*Buttler v. United States*, 138 F. 2d 977 (7th Cir., 1943)), but the result is immaterial (*United States v. Krafft*, 249 F. 919 (3d Cir., 1918), *cert. denied* 247 U.S. 520), and it is not necessary to show that a member of the military actually received or was influenced by the publication or utterance (*Dunne v. United States*, *supra*), although it might be helpful. The test is whether the statements actually are in such form and spoken in such circumstances as to present a substantial danger (*United States v. Pelly*, 132 F. 2d 170 (7th Cir., 1942), *cert. denied* 318 U.S. 764; and cases cited above).

The Logan Act, 18 U.S.C. 953, prohibits any citizen of the United States, without authority of the United States, from carrying on any correspondence or intercourse with any foreign government with intent to influence the measures or conduct of any foreign government in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.

In order to establish that a person has violated the Logan Act, the Government would not only have to prove that he, in fact, carried on conversations with officials of a foreign government in relation to a dispute or controversy with the United States, but, in addition, we would also be required to establish the fact that such conversations were undertaken "with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof * * * or to defeat the measures of the United States * * *."

I am sure you will appreciate the difficulty in securing evidence of the content of conversations between a citizen of the United States and officials of a hostile foreign government. In this connection, I would point out that uncorroborated admissions of a citizen concerning such conversations would be insufficient to support a prosecution under the Logan Act. See *Opper v. United States*, 384 U.S. 84.

Mr. Chairman, that concludes my statement.

The CHAIRMAN. Thank you, Mr. Olson. I can fairly well understand the evidential difficulties in the Fonda case and I also well understand

the reluctance of the Department of Justice to testify in regard to the matter because of the possibility that it would prejudice any eventual prosecution. That, in fact, was one of the reasons why the Chair did not favor a subpoena for Miss Jane Fonda to testify before this committee. But it has been over 2 months since Miss Fonda made her first broadcast from North Vietnam; it has been over a month since the committee asked for the Department's opinion. I wonder if you can be more specific.

You have gone over the statutes involved which obviously have applicability to the matter. I wonder if you can be more specific in apprising the committee of why the Department requires so much time to reach a conclusion when the statements are readily available to the Department of Justice and to the public and to this committee.

MR. OLSON. Miss Fonda's statements were made, I believe, during a period from July 12 to July 25 approximately. We were receiving in our division transcripts of broadcasts that were made and continued to be made after she left. The last such transcription that we received was on August 29. We feel now that we have probably received all of them. Up until that time we had not looked at all of the broadcasts, all of the transcriptions.

I would like to read a little quote regarding the amount of time that has been taken and may still have to be taken before this matter is resolved, from Justice Marshall in the *Ex parte Bollman* case many years ago: "As there is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made a deliberate and temperate inquiry."

THE CHAIRMAN. Is the delay brought about by the belief that the Department may not be successful in a prosecution, or is it brought about by fear of making a martyr of Miss Fonda?

MR. OLSON. I don't know that we have reached that particular situation right now where we are weighing these factors. The first inquiry was trying to get all of the statements that were made and, once we had what we thought were all of them, analyzing them for content. Necessarily next comes an investigation of the evidentiary problems that you have, of securing the necessary evidence if it is available, et cetera.

THE CHAIRMAN. This isn't the first time that an American citizen has traveled to North Vietnam. In fact, there have been tens if not scores of citizens that have traveled to North Vietnam since the year of 1965. This is not the first time that an American citizen made a broadcast in Hanoi and it isn't the first time that an American citizen has made a broadcast obviously aimed at American troops.

Let me ask you this question. Has the Department of Justice considered any of those cases in the light of the treason statute, the peacetime sedition statute and the Logan Act, as well as the wartime sedition statute?

MR. OLSON. During my tenure in the division, which has been since January of 1971, I don't believe to my knowledge that we have considered some of these other visits that you speak of, statements that have been made by citizens in Hanoi.

I believe that there was one where there was an incident of one broadcast during that time that was considered.

THE CHAIRMAN. That is during your term of office?

Mr. OLSON. Not during my term of office as Assistant Attorney General, but during the time I was in the division as Deputy Assistant Attorney General.

The CHAIRMAN. There has only been one case, then, to your knowledge, since the war in Vietnam?

Mr. OLSON. No.

The CHAIRMAN. Only one during the time you have been associated with the Department of Justice?

Mr. OLSON. That's right.

Mr. THOMPSON. And how long has that been?

Mr. OLSON. Since January 15, 1971.

Mr. ZION. Mr. Olson, apparently Ramsey Clark, Abbie Hoffman, and Jerry Rubin have been to North Vietnam and allegedly have been in contact with our enemy over there. Is any investigation being made of their activities?

Mr. OLSON. Ramsey Clark is the most recent incident. It has come to my attention, I believe, that the visits of Jerry Rubin and Abbie Hoffman were prior to that time and I have no knowledge of any inquiry that went on regarding them. We are not aware of any evidence with respect to Ramsey Clark's visit that points toward his violating any of the criminal statutes that I have just spoken of.

The CHAIRMAN. Let me ask you this question in regard to the previous broadcasts: One case you referred to was the Lawson matter which happened in 1970?

Mr. OLSON. I am sorry, Mr. Chairman.

The CHAIRMAN. There is one case that you referred to that was considered by the Department of Justice, the Lawson case, which I believe occurred in 1969 or 1970.

Mr. OLSON. I am not familiar with that.

The CHAIRMAN. What case was it that the Department of Justice considered?

Mr. OLSON. We considered during 1971 a ——— case.

The CHAIRMAN. In these broadcast cases that you have considered, do you feel that you have to have the original tape of the broadcast?

Mr. OLSON. There has to be a voice identification and certainly having tapes of the actual conversation is one of the better ways to make that voice identification.

The CHAIRMAN. Can you make the voice identification by recordings of the broadcast?

Mr. OLSON. Yes.

The CHAIRMAN. In that case and also in the Fonda case you have gotten recordings of the broadcasts, have you not?

Mr. OLSON. We have not. In the first case that I spoke of, I believe we had recordings that were listened to, of the broadcasts.

Mr. THOMPSON. Mr. Chairman, may we follow up on that point?

The CHAIRMAN. I yield to the gentleman.

Mr. THOMPSON. Are we being told that you only have transcripts, that the Department of Justice does not have any actual taped recordings of the Fonda messages?

Mr. OLSON. No. Those tapes and recordings are available.

Mr. THOMPSON. You do have them in the Department of Justice?

Mr. OLSON. I do not know whether we have them in the Department of Justice; I assume that we do. We have transcriptions of them.

Mr. THOMPSON. But certainly a transcript is not the same high standard of evidence that a recording of the actual voice transmission is, should you go to court?

Mr. OLSON. That is correct.

Mr. THOMPSON. But you do have available the actual taped messages?

Mr. OLSON. Yes, we do; they are available, yes.

Mr. THOMPSON. Thank you.

The CHAIRMAN. Let's go specifically into your statement. You mentioned the so-called peacetime statute, which is 2387 of title 18 of the U.S. Code. I don't see where you referred to section 2388. Don't you consider that section 2388 is perhaps applicable to such broadcasts?

Mr. OLSON. I don't believe that it would be applicable to the Fonda broadcasts because it is limited to having been made in the United States itself or to the admiralty or the maritime jurisdiction. So for that reason we did not include it. The provisions are much the same except for that restriction.

The CHAIRMAN. Section 2388 does have a provision to the effect that this section shall apply within the admiralty and maritime jurisdiction of the United States and on the high seas as well as within the United States. Since these broadcasts are occurring on foreign soil, you do not feel that this would come in within the United States, but on the high seas?

Mr. OLSON. That has been our analysis. The other statute would seem to be applicable, 2387, and the penalties are the same, I believe.

The CHAIRMAN. And you also believe that the Vietnam war may not be synonymous with the use of war in the section?

Mr. OLSON. That is a possibility, but I believe in the state of emergency you might cover that situation.

The CHAIRMAN. Let's get into more specifically the elements of an offense related to a broadcast under section 2387. What are the elements of an offense under section 2387 in the light of the Schenck case, which you mentioned, the Dunne case, and many other Supreme Court decisions? Similarly what are the elements of a case under section 2387?

Mr. OLSON. The elements are two, I think, as I have stated in my opening statement. The first is the intent, willful, conscious intent, on the part of the person who makes the statement or disseminates the literature to interfere with, impair, influence the morale, et cetera, of the military forces.

The second element is covered in the Schenck case, a clear and present danger under the circumstances that those statements would accomplish that purpose.

The CHAIRMAN. A clear and present danger that it would bring about a substantive evil which the Congress is empowered to prevent?

Mr. OLSON. Correct.

The CHAIRMAN. There is no question about the substantive evil. The disloyalty, mutiny, or disaffection would be a substantive evil that the Congress has the power to prevent; is that correct? You would agree with that?

Mr. OLSON. Yes, I would.

The CHAIRMAN. And there is a question of a clear and present danger. Is that a question of law or a question of fact for the jury to decide?

Mr. OLSON. It is a question of law.

The CHAIRMAN. It would be a question of law.

Mr. THOMPSON. Clear and present danger is a question of law, and a jury could not determine the fact of a clear and present danger?

Mr. OLSON. I believe that is correct, Congressman.

(At this point Mr. Zion left the hearing room.)

Mr. THOMPSON. What constitutes clear and present danger by law? It would appear to me this is a question of fact to be determined by a jury.

Mr. OLSON. I understand what you mean. It appears to be a mixed question. I think it is a difficult question certainly. It depends upon the words that are used, the probability that they will bring about a substantive evil. However, I still feel that it is a question of law rather than a question of fact.

Mr. THOMPSON. What is the law? If it is a question of law, what is the law as to clear and present danger if it is not a question of fact?

Mr. OLSON. The best I can give you, I believe, are the words of Justice Holmes in the Schenck case. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the Congress has a right to prevent. There is a question of proximity and degree.

Mr. THOMPSON. That very clearly points out it is a question of fact, which must be determined through testimony and, of course, it would be up to the jury to decide whether or not that is in fact the case, and I would say that it is not a question of law, but it is a question of fact to be determined by a jury as to whether it is a clear and present danger.

Mr. OLSON. I still believe, and I think the cases so hold, that the judge will make his determination and will so instruct the jury based upon the facts and circumstances of the case and the words used, and that determination will be—

Mr. THOMPSON. So it is your assessment that the judge would make the determination on the law and instruct the jury that there has been a clear and present danger present and it would not be a determination of fact for the jury.

Mr. Chairman, I am sorry if I am assuming the floor here, but I do think this is important.

The CHAIRMAN. I yield to the gentleman.

Mr. THOMPSON. When you deal in psychological broadcasts such as the Fonda broadcast and such as Axis Sally, and so forth and so on, you talk about a clear and present danger; a clear and present danger in an event of a person with a weapon in his hand is evident; a clear and present danger where there is a psychological message, that may have a time element involved. In other words, it may take repetition, it may take a period of time for the danger to exist, but a psychologist would say it is a clear and present danger. It may appear to somebody else that it is not. Do you mean the determination of that would be by a judge and he would instruct the jury that as a matter of law this is a clear and present danger?

Mr. OLSON. That is correct, after hearing the evidence in the case.

The CHAIRMAN. It would be a mixed question of law and fact then, would it not?

Mr. OLSON. I believe I stated that before, but I think it comes out as probably an instruction to the jury.

The CHAIRMAN. I yield to the gentleman.

Mr. DRINAN. Mr. Olson, going back to your oral testimony here, it is my understanding that of the 10 or more people who have gone to Hanoi that we know about in the last several months, that you have investigated only one person since you took office on January 15, 1971. I did not get the name of that person about whom you did make an inquiry.

Mr. OLSON. The name was ————.

Mr. DRINAN. And what was the result in that investigation?

Mr. OLSON. That we did not prosecute; we decided not to prosecute ————.

Mr. DRINAN. And I didn't understand your remark about Ramsey Clark. You said that some information had come to your attention?

Mr. OLSON. I said we have no information that has come to our attention that he with his trip to Hanoi and his activity there has violated any of the Federal statutes that I have covered here today. I know of no others.

Mr. DRINAN. I respect what you say here that you can't go into the merits of the Jane Fonda case because it is under investigation, but I don't think this question would violate that premise. Why is it that you are investigating Jane Fonda and you have not investigated Jerry Rubin and Abbie Hoffman and others?

Mr. OLSON. I have no personal knowledge of Jerry Rubin and Abbie Hoffman. Those visits were prior to my time. I would not be able to distinguish them.

Mr. DRINAN. In your time Jane Fonda is the one and only case that you say you have under active consideration?

Mr. OLSON. At this time, yes, and the only other one I know of is the one previously mentioned, ————.

Mr. DRINAN. Can you tell us something about the alleged activities of Jane Fonda which make this case different from all of the others?

Mr. OLSON. I am sorry, Congressman Drinan, I don't believe that I can under the ground rules of not commenting on the case.

Mr. DRINAN. Why did you come here, then, if you could not tell us a thing?

Mr. OLSON. I came here because I was invited to come. I was told to come by the Attorney General who, in turn, Chairman Ichord requested that he send a representative or that he come himself. I believe, in my response of August 13, I indicated that we could not comment on the specific facts of the Fonda case.

The CHAIRMAN. I will not yield any further at this time.

Let me go ahead and complete my questions on this line and then I will yield to the gentleman from Georgia, who in effect is responsible for this meeting today.

Back to the question of intent as required by 2387. Now you don't have to have any evidence of intent to bring about the things mentioned in 2387 outside of the words themselves, do you? You can infer that intent from the nature of the language used?

Mr. OLSON. Certainly you can infer the intent from the language used or the writings used.

(At this point Mr. Drinan left the hearing room.)

Mr. OLSON. In the Hartzel case I believe that there were pamphlets distributed.

The CHAIRMAN. In the Fonda case the Chair has looked at the transcripts of the broadcasts. Personally I did not see any words in the broadcasts that asked the military people to do anything other than to think. For example, she asked the question, "Have you any idea what your bombs are doing when you pull the lever?"

Now getting away from the Fonda case, let me ask you this: What would be the effect if a person went to Hanoi and made a broadcast to troops deploring the bombings of North Vietnam if the person making the broadcast had said, "Don't pull the lever"? Do you figure that would be a stronger case than merely asking them to think about what they are doing when they pull the lever?

Mr. OLSON. I think it probably would be. However, again we are dealing with hypothetical cases.

The CHAIRMAN. Mr. Olson, the Congress certainly has the responsibility, if it feels that such action should be prohibited, to explore ways that this can be effectively prohibited. I think that the Department of Justice as a part of the executive, with a responsibility of enforcing the law, should be willing to give the Congress the benefit of your expert advice. This is my purpose in my line of questioning today.

I have no statement from the Department of Justice as to whether the statute is enforceable. You have mentioned that it is difficult of enforcement. But what I am asking about is specific ways that the statute can be amended to make it effective and enforceable perhaps.

Mr. OLSON. Mr. Chairman, I think it is a question of timing. The areas of your inquiry are certainly proper, but the context of this time while we are still considering investigating, if you will, this particular case, I don't think it is an appropriate time for us to comment when we have not decided against prosecution or for prosecution.

The CHAIRMAN. I will yield to the gentleman. The Chair recognizes the gentleman from Georgia.

Mr. THOMPSON. I thank the gentleman for yielding.

Mr. Olson, is this a proper statement, then: The reason for your reluctance to discuss fully and completely Jane Fonda's involvement as it is viewed by the Justice Department is because of your concern for prejudicing any of her rights or jeopardizing a possible prosecution should you in the future decide that the evidence warrants a prosecution?

Mr. OLSON. That is the primary reason for my reluctance. It is a matter of policy, but that is the reason behind the policy.

Mr. THOMPSON. So this matter is still under active investigation; a decision has not yet been made whether or not there should or should not be prosecution, and until such time as a decision is reached, you would prefer not to make statements which would tend to jeopardize your case or possibly prejudice the rights of a person who may be charged with a crime?

Mr. OLSON. That is very true and that is better than I could have said it.

Mr. THOMPSON. I would like to refer to your statement and try to ask you some general questions relating to treason, sedition, and the Logan Act.

I have a question concerning adherence to the enemy, rendering him aid and comfort. Do the cases in this area require that adherence to the enemy or rendering him aid and comfort be only an overt act of aid or may it also be psychological aid, such as a series of statements which have a psychological impact and which, it may be argued, does have the effect of aid and comfort? If there should be a finding by the court that a psychological statement would have in fact aided the enemy, would that suffice to meet the requirements of the second part of the definition of treason? Adherence has been established as the first part, and aid and comfort to the enemy as being the second part of the definition. In short, could a psychological type broadcast render aid and comfort to the enemy within the meaning of the treason statute?

MR. OLSON. I believe that it could. I believe that type of broadcast we are speaking of was present in the Axis Sally and Tokyo Rose cases. I think the overt act is the fact of making the broadcast itself.

MR. THOMPSON. Concerning the requirement of two witnesses, does this require that there be two witnesses present to the act of broadcasting or may there be two persons who have heard a live or recorded broadcast who are familiar enough with the voice of the person broadcasting to testify that "I heard this," or does it require an actual visual sighting of two witnesses of the person charged with treason actually speaking the words into a microphone or recording device?

MR. OLSON. It is my understanding of the law that it is the former. There must be two perceptive witnesses to the act of broadcasting, if you will, in the studio where the broadcast is made. I believe that is the enunciated factor in the Axis Sally and Tokyo Rose cases.

MR. THOMPSON. You say there must be two in the studio. There must be two persons in the studio at the time that the broadcast is made, who actually viewed the broadcast rather than hearing it over the air?

MR. OLSON. That's right.

MR. THOMPSON. What if an individual secretes himself in a room with a tape recorder and records a message and then takes it and hands it to the radio who then play it over the air? Would it be impossible even if they advocated killing the President, advocated the troops rebelling, killing their commanders, and so forth, to ever prove treason?

MR. OLSON. I think possibly that you could, if you could show witnesses to the recording.

MR. THOMPSON. I am saying there is no witness to a recording; in other words, a person closes himself off into a room with a tape recorder and speaks into this tape recorder calling on the troops to mutiny, to kill their officers, and so forth, and then that is, in turn, broadcast. Are we in a position by which there can be no treason under such circumstances?

MR. OLSON. It would seem to offer problems.

MR. THOMPSON. Should we come up with legislation designed to clarify this? It is obvious when the original Constitution was drafted and our laws were enacted pursuant to this, we did not have a modern electronic means of voice communication, and so forth. Should not the Department of Justice investigate this and possibly recommend to this committee or to the Congress legislation which would plug up some of these what I would call loopholes?

Mr. OLSON. This two-witness rule is a pretty basic thing. It is contained in the Constitution.

Mr. THOMPSON. Yes, and it may require a constitutional amendment, but at the time the Constitution was written I don't think anyone had any idea that we would ever have a machine or device whereby a person could close himself in a closet, record a message, and then be completely free of any prosecution because of the two-witness rule, and should not the Department of Justice look at this?

In fact, I would like to request that you do look at the possibility of legislation that could be considered. I am not saying that it should necessarily be advocated, but certainly I think we should look into this in view of the fact that this is a changing world we live in with the technological developments that take place. The laws must be changed in certain areas.

I in no way want to take away from the rights of individuals protections afforded by the Constitution, but at the very same time I think that we must recognize that there have been technological changes which require changes within the Constitution so that it relates to the technology we have and that society be protected.

Let me go on to another question. Concerning treason in a declared war or an undeclared war, in your opinion is this really a relevant question? Can there not be treason when there is a state of hostilities, a war existing? The Constitution does not state a declared war or undeclared war. Can there be treason committed in an undeclared war?

Mr. OLSON. I would agree that there can be and I cited a couple of cases that use that language as being open hostilities. I think it would be a defense that someone would raise.

Mr. THOMPSON. But it would not preclude a finding that treason actually has been committed if you have the adherence to the enemy, you have the aid and comfort to the enemy, you have the two witnesses, and the act is of such overtness and magnitude that certainly the mere fact that there is an undeclared war would not preclude a finding of treason?

Mr. OLSON. I agree with you. I think in the historical beginnings of treason they did not have in mind declared or undeclared war.

Mr. THOMPSON. I think we have covered the question of broadcasting. That frankly does concern me greatly, that we may be precluded from being successful in prosecution of treason because of our two-witness rule when a broadcast can go to millions of people and yet there were not two persons present.

Mr. OLSON. We do have sedition.

Mr. THOMPSON. I realize that, and sedition is what I am coming to next. The question of freedom of speech was raised in your statement. Do the same guarantees of freedom of speech in the Constitution apply to the person who speaks within the geographic limits of the United States or in an area under the control of the United States as would apply if a speech is made beyond the territorial limits or laws of the United States?

For example, a statement made in North Vietnam by an American national, is that protected to the same degree as a statement made in America by an American national under the first amendment of the Constitution?

Mr. OLSON. It is my understanding that there is no difference.

Mr. THOMPSON. Concerning the laws of sedition, you pointed out that one of the statutes that we had mentioned apparently relates only to crimes committed within the jurisdiction of the United States, the admiralty or those areas—

Mr. OLSON. 2388.

Mr. THOMPSON. 2387, however, would apply in this particular case. What are the requirements so far as witnesses to the event under the laws of sedition?

Mr. OLSON. We do not have the two-witness rule.

Mr. THOMPSON. We do not have the two-witness rule. Would it be your opinion that under the law of sedition that you could try a person if there are recordings of the statements made and if it has been determined that does fall under the sedition statute in giving aid and comfort to the enemy—or as the statute reads, I don't have it in front of me—but that a recording could suffice in this area?

Mr. OLSON. Yes.

Mr. THOMPSON. And also in your opinion would it require an overt statement of "Kill your commanders, don't carry out your orders," or could a psychological speech, designed by the actual reading of the statement, that has the psychological impact of demoralizing the troops to get them to disobey orders, could that suffice as well?

Mr. OLSON. I believe that could suffice. It depends upon the facts and circumstances, where it is made.

The CHAIRMAN. Would the gentleman yield at that point?

Mr. THOMPSON. Yes, surely.

The CHAIRMAN. How would you go about proving or presenting evidence to the effect that this would be psychologically designed to bring about the effect of demoralizing the troops?

Mr. OLSON. I believe we would rely to a great extent upon the words themselves. I don't know about expert testimony being available in this situation. It doesn't seem to be an area in which an expert could be qualified to give testimony.

The CHAIRMAN. You have psychological war experts, do you not?

Mr. OLSON. I believe that we do, yes.

The CHAIRMAN. I take it that the Department of Justice has not considered the use of psychological warfare experts in proceedings that might be brought in the broadcast cases.

Mr. OLSON. I also think that although not absolutely necessary that people to whom the speeches were directed who had actually heard them could testify as to the effect that they had on them.

The CHAIRMAN. You are specifically referring to testimony by military people who may have heard the broadcasts?

Mr. OLSON. Yes, I am.

The CHAIRMAN. I thank the gentleman for yielding.

Mr. THOMPSON. The *New York Times* on August 15 carried a small item datelined San Francisco, August 14: "Mr. Kleindienst said at a news conference here that the Justice Department had found no evidence of criminal violations by Miss Fonda."

That is the complete full statement of the *New York Times*. It is about three-quarters of an inch. Has there been a finding by the Justice Department, is this an accurate reporting by the *New York Times* that Mr. Kleindienst says there has been no finding of criminal violations by Miss Fonda, or what is the status?

Mr. OLSON. I am aware of that news release. I discussed that with the Attorney General and that was not the intent of what he said. He did not mean to say we conducted a full investigation and it had been completed and as a result thereof we found no violations. That was not the intent. I believe he meant when he was asked a question regarding Miss Fonda that as of this instance, as far as an inquiry has progressed, we have no statements to make.

Mr. THOMPSON. You had no statement to make back on August 14. Now on September 16 there is an item, this happens to be from the *Pittsburgh Press*, but also there is an item in *The Evening Star*: "Antiwar activist Jane Fonda in a brief visit here said the U.S. Justice Department has dropped its investigation of her Hanoi radio broadcasts."

Have you dropped your investigation?

Mr. OLSON. Certainly not. I don't know where she got her information. I don't believe her sources are very good.

Mr. THOMPSON. So the matter is still under active investigation. A determination has not yet been made whether or not there should be prosecution or no prosecution.

Mr. OLSON. That is correct.

Mr. THOMPSON. I would like to ask you a question or two concerning the Logan Act. What is the date of the Logan Act?

Mr. OLSON. I think it is about 1799, approximately.

Mr. THOMPSON. In other words, it is an act that was enacted years ago. Was the purpose of it to provide, in effect, that we would have only one voice speaking for the United States on foreign policy matters being negotiated?

Mr. OLSON. I believe that was the purpose.

Mr. THOMPSON. Have there been any cases brought, to the best of your knowledge, in the history of the United States concerning the Logan Act? I have not researched this myself.

Mr. OLSON. I read an article in the *Post*, I believe, quite a comprehensive article on the history of this several weeks ago, and they mentioned there had been only one prosecution under this act. There may have been an indictment, but I don't believe it progressed any further than the indictment stage and I don't have the name of that particular matter.

To my knowledge at most one, probably as far as the indictment stage.

Mr. THOMPSON. During the time you have been a Deputy Attorney General—is it Deputy or Assistant?

Mr. OLSON. Assistant.

Mr. THOMPSON. During the time you have been a Deputy or Assistant Attorney General, have you considered any indictments under the Logan Act because of the actions taken by private citizens? I am not asking you whether or not you have. I am simply asking you whether or not you have looked into the actions of various people concerning this, or have you simply considered this to be a law that is so vague and indefinite that there is no chance of prosecution and therefore you are not investigating the possibility?

Mr. OLSON. We have during my tenure as Assistant Attorney General and for the year before, I am not aware of facts coming to our attention or investigation being requested of us under the Logan Act.

We have from time to time had inquiries by way of public mail, et cetera.

Mr. THOMPSON. But you make a distinction between an inquiry being made by the Justice Department and an investigation; is that correct? In other words, you may inquire into certain circumstances without having the investigation?

Mr. OLSON. I would say that is correct; before instituting a formal investigation sometimes you make some preliminary inquiries to see whether other agencies of Government have an interest.

Mr. THOMPSON. In order to establish that a person has violated the Logan Act, you state in your statement that the Government would, one, not only have to prove that he, in fact, carried on conversations with officials of a foreign government in relation to a dispute or controversy, but, in addition, two, he would be required to establish that such conversations were taken "with intent to influence the measures or conduct of any foreign government or of any officer or agent thereof * * * or to defeat the measures of the United States * * *."

Mr. OLSON. That is primarily a quote from the statute and is not an interpretation from any case authority that we have to go back on.

Mr. THOMPSON. When we have people going and negotiating with North Vietnam concerning the prisoners of war releases, do you feel that this in any way comes under the provision of the Logan Act?

Mr. OLSON. I think that is a hard question. It is certainly in the general field.

Mr. THOMPSON. Taking the quote that you have, item one, proof he carried on conversations with officials in relation to dispute or controversies of the United States, certainly we can prove that certain people carried on conversations. We have some people over there right now in North Vietnam; we can prove that conversations went on, that they are in the field of the prisoners, that there is a dispute or controversy with the United States. That part is satisfied.

The second part, we be required to establish that such conversations were taken with intent to influence the measures or conduct of a foreign government or any officer thereof, certainly it would appear to me that could be substantiated, that these were taken "with intent to influence the measures or conduct of any foreign government * * *."

I would think that based upon the quote that you have given us here, there would be ample reason, if the Department so chose, that some people could be brought to trial under the Logan Act.

Now you have a third measure; you have "or to defeat the measures of the United States." Certainly I would not say the release of prisoners is something we would desire to defeat. We would welcome the release of all prisoners, but it is obvious it is being used as a propaganda tool, and I suspect these people will be brought back to the United States and be put before television cameras and make certain statements which the North Vietnamese would consider beneficial to their cause.

Is there any reason why the Department is not bringing cases here? Is it political, the reason you do not bring charges against people negotiating with the enemy, attempting to influence them?

Mr. OLSON. In cases of this nature where foreign policy is involved, as it certainly is in this particular act, as you pointed out the rea-

son for it, we rely pretty much on the State Department's interests and impetus. There is also in all of these cases "without authority of the United States."

Mr. THOMPSON. You don't rely upon the State Department to tell you what to prosecute and who not to prosecute, do you?

Mr. OLSON. We certainly do rely upon them, as we do in espionage cases, for a great deal of our testimony.

Mr. THOMPSON. As to where prosecution is concerned, if there is a clear violation of a statute of the United States, is not the Attorney General charged with the duty and responsibility in carrying out the duties of his office to prosecute those whom he knows are in violation of the statutes of the United States?

Mr. OLSON. I don't think this knowledge can be entirely ours from reported activities where there is an actual violation of the statute involved. I am talking about a statute such as the Logan Act. I also analogize with the espionage statutes. We have to have consultation.

Mr. THOMPSON. Within your Department, do you carry on—I know the FBI routinely reports upon the activities of certain people who go to North Vietnam, and so forth, and are in fact negotiating with the enemy. But within your Department do you not consider these matters and make a determination as to whether to prosecute or not, or are you simply sitting over there ignoring it?

Mr. OLSON. We are certainly not ignoring it, but in matters of this nature usually the initiating order would come from the State Department because of the foreign policy situation implications, because of the consent or the authority to do this, engage in this type of activity, because many of the visits that are made over there are made with some approval, official, tacit or otherwise, with some briefing beforehand.

Mr. THOMPSON. So in effect you are saying that some of these people have gone to Hanoi with the cooperation of the United States Government. Would this be true of the planned trip of Jimmy Hoffa that was planned and the publicity leaked out and it was canceled?

Mr. OLSON. I don't have any particular knowledge of that particular matter.

Mr. THOMPSON. Is there any political reason as to why the Department of Justice would delay any action on the Jane Fonda matters until after the election for the President of the United States in November?

Mr. OLSON. I don't think it is the Department of Justice's role to engage in judging prosecutions based upon political expediency. That is my personal opinion.

Mr. THOMPSON. Does the Department of Justice from time to time try to time the request for indictments before a grand jury dependent upon external events that are occurring in the United States, such as elections or possibly emotional events that are taking place, or do you operate strictly upon the facts of the case and, once your investigation is complete, then present it to a grand jury independent of external events which are occurring in other branches of Government?

Mr. OLSON. When we have matters under investigation and come to the point where we recommend prosecution, we usually prepare a prosecution memorandum, and many times it has to go higher up to be approved. Sometimes it is approved, sometimes it isn't approved. I don't know what goes into all of the decisionmaking process of those decisions.

Mr. THOMPSON. The decisionmaking process, would this reach the President's desk in some instances as to whether or not a prosecution would be brought? Is he ever consulted in a matter such as this?

Mr. OLSON. I don't have any knowledge about that. I am not quite high enough up in the echelon.

Mr. THOMPSON. Do you have an estimate of the time interval that we should expect before a decision is made in the Jane Fonda matter, concerning whether or not there would be prosecution or no prosecution? Would this occur before the November elections?

Mr. OLSON. Congressman, I could not make an estimate on that. We have requested certain investigation to be completed, to be looked into, certain evidentiary matters. When we will receive the necessary information to put into the whole picture I could not say. It could be before and it could be after.

Mr. THOMPSON. Here is something you can answer. Would you in your Department be governed to any extent by the political factors of a request for prosecution occurring before the election? Would that cause you to either delay or to prevent it before the election? In other words, would your Department, I am talking of yourself, would you be motivated by political factors in this?

Mr. OLSON. As far as I am concerned, you are asking me subjectively would I, and I would say "No."

Mr. THOMPSON. I believe, Mr. Chairman, that just about finishes the questions that I have in this matter.

The CHAIRMAN. Thank you very much.

Mr. Counsel, in regard to the questioning concerning political warfare and the psychological effect of the statements, I would point out that the committee has had analyses made of the Fonda broadcasts by persons who at least have some degree of expertise in the matter and, if there be no objection, I would place in the record analyses of the Fonda broadcasts prepared by Edward Hunter, Francis M. Watson, Jr., and General S. L. A. Marshall.¹

The CHAIRMAN. The Chair recognizes the gentleman from North Carolina, Mr. Preyer.

Mr. PREYER. Mr. Chairman, I have no questions at this time. I think that the elaborate staff studies here have done a good job in framing the issues with the questions that have been brought out, what could be brought out within the range of permissible questions today.

I have no questions at this time.

Mr. THOMPSON. Mr. Chairman, may I ask one more question, make one more observation?

The CHAIRMAN. Mr. Thompson.

Mr. THOMPSON. Concerning specifically the Jane Fonda matter and the time frame, I take what you are saying is that there is no deliberate procrastination within the Department for political reasons in pursuing the Jane Fonda matter, that you are pursuing it with all deliberate speed, whatever that may be, and when your investigation is full and complete a determination will be made. If possible this will be before the election; it is possible it will be after the election but that you want to be very careful and certain that when you do make a recommendation that it is substantiated by a complete, thorough investigation whether this takes 1 month or 4 months or whatever it

¹ See pp. 7581-7602 for these analyses.

may be, and that at that time it would be released without regard to political impact?

Mr. OLSON. That is correct.

Mr. THOMPSON. Thank you.

The CHAIRMAN. Thank you very much, gentleman from Georgia. Let me ask you this question in regard to all of these broadcasts, Mr. Olson. Is it the position of the Department of Justice that an individual who endeavors to instill doubts in the minds of troops concerning their loyalty to the United States or obedience to military orders is not engaging in sedition, even though the other elements of sedition are present?

Mr. OLSON. I don't know that I quite understand. Is it our position that psychological statements rather than direct statements are not sufficient, is that your question?

The CHAIRMAN. Psychological statements which clearly manifest intent to instill doubts in the minds of troops concerning their loyalty to the United States, can they be seditious in your opinion?

Mr. OLSON. I certainly believe they can be seditious, all the facts and circumstances, the number made, all the factors.

The CHAIRMAN. I want to ask you this question specifically concerning the Fonda matter for your consideration. The committee, as I stated before, has examined the transcript. In these transcripts she said:

Please think what you are doing. Have you any idea what the bombs are doing when you pull the levers and push the buttons? How does it feel to be used as pawns? Tonight when you are alone ask yourself what are you doing? Accept no ready answers fed to you by rote from basic training. I know if you saw and knew the Vietnamese under peaceful conditions you would hate the men who are sending you on bombing missions. If they told you the truth, you would not fight, you would not kill. You have been told lies so it would be possible for you to kill.

Wouldn't you have to conclude that these statements are designed to engender doubt?

Mr. OLSON. Mr. Chairman, I don't believe I should respond to that under the guidelines I have set up on commenting on the Fonda case.

The CHAIRMAN. Let me ask you this question. I have to conclude in the light of the history and the actions of the Department of Justice concerning the broadcasts that we have mentioned that either the law that would possibly prohibit such statements and such actions is unenforceable or that the law does not proscribe these activities as criminal activities or that the Department of Justice fears making a martyr out of the individuals or at least fears that the trials would enter the political arena, such as the Conspiracy Seven, along the lines the gentleman from Georgia has mentioned.

Let me ask you this question: Do you feel that it is constitutionally permissible to prohibit travel by any United States citizen to a geographical territory under the de jure or de facto control of a foreign power that is engaged in hostilities with the United States?

Mr. OLSON. Yes, I do. I think that question has been answered in the affirmative in the Zemel case, I believe it is.

The CHAIRMAN. Has the Department of Justice considered making the recommendations to the Congress for legislation in this area?

Mr. OLSON. I believe that since 1967 the Department of Justice and our division, in fact, has supported legislation of this type on numerous occasions. I understand that there are six such bills currently be-

fore the House. I certainly know of no reason for us to change our position that we have taken in the past. We have supported such legislation in the past and I know of no reason why we shouldn't in the future.

The CHAIRMAN. I have checked the reports of the Department of Justice and have come to the conclusion that it did, in fact, support, that it did support such legislation. There have been several bills introduced that touch upon the matter.

Let me ask you this question: Do you feel that it would be more effective to enact legislation in this area that would effectively control and restrict the travel of American citizens to a country with which the Nation is having hostilities?

Mr. OLSON. I certainly feel so.

The CHAIRMAN. We do have with us today representatives of the Passport Office of the State Department. I don't think it is necessary at this time to go into detail as to the status of the law in this area. The passport restrictions are, in your opinion, not effective; is that not right?

Mr. OLSON. I understand by case law that there is no statute with which a person can be effectively prevented from traveling to an unauthorized area. The only possible way really is to try to revoke the passport, once this has occurred, if it has been used improperly.

Mr. THOMPSON. Will the chairman yield?

Concerning the Fonda matter and the memorandum submitted to the chairman by the Department of State on September 12, in effect it pointed out that the U.S. courts have determined U.S. law on this date that passport is not restricted to travel in any foreign country or area. However, the use of U.S. passports for travel into or through any of the following areas is authorized only when specifically validated for such travel by the Department of State: Cuba, North Korea, and North Vietnam.

Now if a person goes ahead and travels in these areas without that foundation, do you feel that he can be tried and there would be a reasonable chance of a conviction?

Mr. OLSON. No, I don't. They can be possibly indicted, but the problem of proof that they actually used the passport for that purpose—

Mr. THOMPSON. Does the law require an actual use of a passport? This goes on to state that Miss Fonda was issued a passport in the legal name of Jane Seymour Plemianikov on June 23. It says there was no indication in the Department's file that Miss Fonda ever applied for a validation of her passport in order to travel to North Vietnam. Upon Miss Fonda's return to the United States the Department was advised of her arrival by the Immigration and Naturalization Service. At the request of the Department her passport was examined by the agent who reported that detailed examination failed to show any evidence of admission or exit from North Vietnam.

Had that been stamped that she entered and then left North Vietnam, could she then have been tried more successfully?

Mr. OLSON. Certainly. That would be evidence that she used the passport to travel there.

Mr. THOMPSON. What about the fact that she was, in fact, there as shown by television cameras, and so forth? Is it the use of her passport or her presence in the country?

Mr. OLSON. I think it is the use of the passport that would be the only violation.

Mr. THOMPSON. So, therefore, there is no violation of passport laws.

The CHAIRMAN. At that point, we do have the analyses of the broadcasts by the individuals mentioned in the record. Of course, this is not testimony; it is prepared outside of this executive hearing. I don't think there would be any limitations upon sending the analyses to the Justice Department. So, without objection, the Chair will furnish the Department of Justice with those analyses.

Thank you very much for appearing today, Mr. Olson.

Mr. OLSON. Thank you.

The CHAIRMAN. On August 15 the Chair directed a letter to Mrs. Frances Knight, Director of the Passport Office, in regard to the travel of Miss Fonda to North Vietnam, and on September 14, 1972, the Chair extended an invitation to Mrs. Knight to appear at this hearing today.

Without objection that correspondence will be put in the record at this point. It is my understanding that Mrs. Knight is out of the country today and appearing in her place is the Deputy Director of the Passport Office, Mr. Robert Johnson, Deputy Director.

(The documents follow:)

AUGUST 15, 1972.

Mrs. FRANCES G. KNIGHT,
Director, Passport Office,
Department of State,
Washington, D.C.

DEAR MRS. KNIGHT: The Committee on Internal Security has a current interest in the recent trip by actress Jane Fonda to Hanoi because of her reported radio broadcasts directed to United States servicemen. I have noted news accounts stating that the State Department "rebuked" Jane Fonda for her broadcasts.

I am enclosing copies of two news releases explaining in more detail the Committee's interest.

In order that this Committee will be in a position to assess Fonda's activities in light of existing laws and decisions I would be most appreciative if you would furnish me for Committee use a memorandum covering the following points:

1. the regulation upon which is based the State Department prohibition against travel to North Vietnam and the nature of the notice given to U.S. passport holders of that prohibition and whether such notice was given to Jane Fonda;

2. whether travel to North Vietnam contrary to State Department regulations is a violation of Title 18, U.S. Code, Section 1544 (use of passport in violation of the conditions or restrictions therein) and, if so, the current state of the law, with respect to prosecutions under that section;

3. any evidence in your possession, or to which you could direct the Committee, establishing the fact of Fonda's travel to Hanoi (such as records accessible to the Committee showing travel from Vientiane to Hanoi).

I will be grateful for a reply on or before September 7, 1972 in order that the Committee will have your material for study along with that requested from the Department of Justice.

Sincerely yours,

RICHARD H. ICHORD, *Chairman.*

DEPARTMENT OF STATE,
Washington, D.C., September 12, 1972.

HON. RICHARD H. ICHORD,
Chairman, Committee on Internal Security,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am replying to your letter of August 15, 1972, addressed to Miss Frances G. Knight, Director of the Passport Office, concerning the recent trip by Jane Fonda, whose legal married name is Jane Seymour Plemiannikov, to Hanoi.

As you requested, there is enclosed a memorandum covering the points set forth in your letter which I hope is fully responsive to your inquiry.

If I can be of any further assistance to you, on this or any other matter, please do not hesitate to let me know.

Sincerely yours,

DAVID M. ABSSHIRE,
Assistant Secretary for Congressional Relations.

Enclosure.

MEMORANDUM TO THE COMMITTEE ON INTERNAL SECURITY RELATING TO TRAVEL TO NORTH VIET-NAM

1. Title 22, Code of Federal Regulations, Section 51.72 is the basis for the Department of State's prohibition against travel to North Viet-Nam. This section reads as follows:

"Upon determination by the Secretary that a country or area is:

- (a) A country with which the United States is at war, or
- (b) A country or area where armed hostiles [sic] are in progress, or
- (c) A country or area to which travel must be restricted in the national interest because such travel would seriously impair the conduct of U.S. foreign affairs.

U.S. passports shall cease to be valid for travel into or through such country or area unless specifically validated therefor. Any determination made under this section shall be published in the FEDERAL REGISTER along with a statement of the circumstances requiring the restriction. Unless limited to a shorter period, any such restriction shall expire at the end of 1 year from the date of publication of such notice in the FEDERAL REGISTER, unless extended or sooner revoked by the Secretary by Public notice. (Dept. Reg. 108.583, 33 F.R. 5681, Apr. 12, 1968)"

The notice given to United States passport holders consists of the following:

- (a) The notice consists of a public notice published in the Federal Register on March 24, 1972, by the Secretary of State restricting the use of the passport for travel into or through North Viet-Nam unless properly validated. (Copy of this notice is attached).

- (b) The following legend which appears on page 4 of all current United States passports including the passport issued to Miss Fonda:

"U.S. courts have interpreted U.S. law in effect on the date this passport is issued as not restricting the travel of a U.S. citizen to any foreign country or area.

However, the use of a U.S. passport for travel into or through any of the following areas is authorized only when specifically validated for such travel by the Department of State: Cuba, North Korea, North Viet-Nam.

You should consult a passport agency or an American consular office to determine whether any changes have been made in the above list.

This passport must not be used by any person other than the person to whom issued or in violation of the conditions or restrictions placed therein or in violation of the rules regulating the issuance of passports. Any willful violation of these laws and regulations will subject the offender to prosecution under Title 18, United States Code, Section 1544."

- 2. Title 18, U.S. Code, Section 1544 provides as follows:

"Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passport; or

Whoever willfully and knowingly furnishes, disposes of, or delivers a passport to any person, for use by another than the person for whose use it was originally issued and designed—

Shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

In order to secure a conviction under this law, the Government must be in a position to prove that the passport was *used* in violation of the geographic restrictions which are contained therein.

Because admissible evidence of sufficient weight to sustain a conviction showing illegal use of the passport for travel in or through a restricted area is most

difficult to obtain, only a few prosecutions have been recommended. Of those cases recommended not one has been accepted for prosecution by a United States attorney.

3. Miss Fonda was issued a passport in her legal name of Jane Seymour Ple-miannikov on June 23, 1972. There is no indication in the Department's files that Miss Fonda ever applied for a validation of her United States passport in order to travel to North Viet-Nam. Upon Miss Fonda's return to the United States the Department was advised of her arrival by the Immigration and Naturalization Service. At the request of the Department her passport was examined by an agent of the Immigration and Naturalization Service who reported that detailed examination of her passport failed to show any evidence of admission or exit from North Viet-Nam. Since no incriminating evidence was found in her passport, her passport was properly stamped to show her reentry and returned to her. The Department has no evidence showing that Miss Fonda used the passport in traveling to or in North Viet-Nam.

The records of the Department do not contain evidence relating to the travel by Miss Fonda between Vientiane and Hanoi.

[From the Federal Register, March 24, 1972]

DEPARTMENT OF STATE

[Public Notice 353]

TRAVEL INTO OR THROUGH CUBA

RESTRICTION ON USE OF U.S. PASSPORTS

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72 (c), use of U.S. passports for travel into or through Cuba is restricted as unrestricted travel into or through Cuba would seriously impair the conduct of U.S. foreign affairs. To permit unrestricted travel would be incompatible with the resolutions adopted at the Ninth Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States, of which the United States is a member. At this meeting, held in Washington from July 21 to 26, 1964, it was resolved that the governments of the American States not maintain diplomatic, consular, trade or shipping relations with Cuba under its present government. This resolution was reaffirmed in the Twelfth Meeting of Ministers of Foreign Affairs of the OAS held in September 1967, which adopted resolutions calling upon member States to apply strictly the recommendations pertaining to the movement of funds and arms from Cuba to other American nations. Among other things, this policy of isolating Cuba was intended to minimize the capability of the Castro government to carry out its openly proclaimed programs of subversive activities in the hemisphere.

U.S. passports shall not be valid for travel into or through Cuba unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire at the end of a year from the date of publication in the FEDERAL REGISTER unless extended or sooner revoked by public notice. *Effective date.* This notice becomes effective on March 16, 1972.

Dated: March 16, 1972.

[SEAL]

WILLIAM P. ROGERS,
Secretary of State.

[FR Doc. 72-4539 Filed 3-23-72; 8:51 am]

[Public Notice 354]

TRAVEL INTO OR THROUGH NORTH KOREA

RESTRICTION ON USE OF U.S. PASSPORTS

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72(c), use of U.S. passports for travel into or through North Korea is restricted as unrestricted travel into or through North Korea would seriously impair the conduct of U.S. foreign affairs. In view of the expressed virulent hostility of the North Korean regime toward the United States, the

provocation by North Korea of incidents along the military demarcation line, and the special position of the Government of the Republic of Korea which is recognized by resolution of the United Nations General Assembly as the only government in Korea, the Department of State believes that wholly unrestricted travel by American citizens to North Korea would seriously impair the conduct of U.S. foreign affairs.

U.S. passports shall not be valid for travel into or through North Korea unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire at the end of a year from the date of publication in the FEDERAL REGISTER unless extended or sooner revoked by public notice.

Effective date. This notice becomes effective on March 16, 1972.

Dated : March 16, 1972.

[SEAL]

WILLIAM P. ROGERS,
Secretary of State.

[F.R. Doc. 72-4540 Filed 3-23-72 ; 8:51 am]

[Public Notice 355]

TRAVEL INTO OR THROUGH NORTH VIET-NAM

RESTRICTION ON USE OF U.S. PASSPORTS

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72(b), use of U.S. passports for travel into or through North Viet-Nam is restricted as this is "a country or area where armed hostilities are in progress."

U.S. passports shall not be valid for travel into or through North Viet-Nam unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire at the end of a year from the date of publication in the FEDERAL REGISTER unless extended or sooner revoked by public notice.

Effective date. This notice becomes effective on March 16, 1972.

Dated : March 16, 1972.

[SEAL]

WILLIAM P. ROGERS,
Secretary of State.

[F.R. Doc. 72-4541 Filed 3-23-72 ; 8:51 am]



DEPARTMENT OF STATE

Washington, D.C. 20520

September 25, 1972

Honorable Richard H. Ichord
Chairman
Committee on Internal Security
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with the request made by Committee Counsel, Mr. Donald Sanders, to Mr. Robert D. Johnson during his appearance before your Committee on September 19, 1972, there is enclosed a canceled sample United States passport for the record.

If we can be of any further service to you or to the Committee, please do not hesitate to call on us.

Sincerely yours,

David M. Abshire
Assistant Secretary for
Congressional Relations

Enclosure:
Canceled sample passport

PASSPORT



*United States
of America*

PASSPORT NUMBER

PEN AND INK ENTRY OF THE PASS-
PORT NUMBER BY THE BEARER

PLEASE FILL IN THE NAMES AND ADDRESSES BELOW.

BEARER'S ADDRESS IN THE UNITED STATES:

BEARER'S FOREIGN ADDRESS:

IN CASE OF DEATH OR ACCIDENT NOTIFY THE NEAR-
EST AMERICAN DIPLOMATIC OR CONSULAR OFFICE AND:

Name

Address

IMPORTANT INFORMATION

This passport is the property of the United States Government and must be surrendered upon demand by an authorized representative of the Department of State. It is NOT VALID until signed BY THE BEARER on page two.

LOSS, THEFT OR DESTRUCTION OF PASSPORT. The loss, theft or destruction of a passport is a very serious matter and must be reported immediately to local police authorities and to the Passport Office, Department of State, Washington, D.C. 20524, or to the nearest American consular office. A new passport will be issued only after careful investigation which will entail considerable delay and may result in the issuance of a limited passport.

(CONTINUED ON LAST PAGE)



*The Secretary of State
of The
United States of America*

*herely requests all whom it
may concern to permit the
citizen(s) of the United States
named herein to pass without
delay or hindrance and in
case of need to give said
citizen(s) all lawful aid and
protection.*

→ **WARNING:** ALTERATION, ADDITION OR MUTILATION OF ENTRIES IS PROHIBITED.
ANY UNOFFICIAL CHANGE WILL RENDER THIS PASSPORT INVALID.

NAME		BIRTH PLACE	
BIRTH DATE		HAIR	
HEIGHT		EYES	
WIFE		ISSUE DATE	
MINORS		EXPIRATION DATE →	
		SIGNATURE OF BEARER	

→ **IMPORTANT:** THIS PASSPORT IS NOT VALID UNTIL SIGNED BY THE BEARER. PERSONS INCLUDED HEREIN MAY NOT USE THIS PASSPORT FOR TRAVEL UNLESS ACCOMPANIED BY THE BEARER.

Photograph

Amendments and Endorsements

Notice

U.S. courts have interpreted U.S. law in effect on the date this passport is issued as not restricting the travel of a U.S. citizen to any foreign country or area.

However, the use of a U.S. passport for travel into or through any of the following areas is authorized only when specifically validated for such travel by the Department of State:

CUBA

NORTH KOREA

NORTH VIET-NAM

You should consult a passport agency or an American consular office to determine whether any changes have been made in the above list.

This passport must not be used by any person other than the person to whom issued or in violation of the conditions or restrictions placed therein or in violation of the rules regulating the issuance of passports. Any willful violation of these laws and regulations will subject the offender to prosecution under Title 18, United States Code, Section 1544.

IMPORTANT INFORMATION

EXPIRATION. This passport is valid for five years unless expressly limited to a shorter period. The expiration date is given on page two.

NEW PASSPORT. This passport should be presented when applying for a new passport.

TRAVEL IN DISTURBED AREAS. If you travel in disturbed areas, you should keep in touch with the nearest American consular office.

PROLONGED RESIDENCE ABROAD. If you reside abroad for a prolonged period, you should register at the nearest American consular office.

LOSS OF NATIONALITY. You may lose your United States nationality by being naturalized in, or by taking an oath or making a declaration of allegiance to, a foreign state; or by serving in the armed forces or accepting employment under the government of a foreign state. For detailed information, consult the nearest American consular office.

WARNING TO DUAL NATIONALS. A person is considered a dual national when he owes allegiance to more than one country at the same time. A claim to allegiance may be based on facts of birth, marriage, parentage or naturalization. A dual national may, while in the jurisdiction of the other country, which considers him its national, be subject to all of its laws, including military service. If difficulties occur, consult the nearest American consular office.

ALTERATION OR MUTILATION OF PASSPORT. This passport must not be altered or mutilated in any way. You must not alter any dates or make any changes in your description, on the photograph, or on any other page of this passport. Alteration may make it INVALID and, if willful, may subject you to prosecution (Title 18, U.S. Code, Section 1543). Only authorized officials of the United States or of foreign countries, in connection with official matters, may place stamps or make statements, notations or additions in this passport. However, you may amend or update information supplied by you on the inside of the front cover of this passport, if necessary.

GENERAL INFORMATION

IMMUNIZATIONS. The International Health Regulations adopted by the World Health Organization stipulate that vaccination against smallpox, cholera, and yellow fever may be required as a condition of entry to any country. For return to the United States, a Smallpox Certificate will be required only if, in the preceding 14 days, a traveler has visited a country reporting smallpox. Many countries require entering travelers to possess a valid International Certificate of Vaccination against Smallpox. In addition, some countries require travelers to possess valid Cholera and/or Yellow Fever Certificates. Details concerning recommended and required immunizations and prophylaxis, for travel to all areas of the world, may be obtained from your local or State health department.

HEALTH INSURANCE. Persons contemplating travel abroad should contact their medical insurance company to determine what coverage, if any, they have while outside the U.S. Generally Social Security Medicare does not cover health care expenses outside the U.S.

CUSTOMS SERVICE. Know before you go. The pamphlet "Customs Hints" gives you current pertinent information about Customs requirements, and how they apply to articles acquired abroad. Obtain a copy from your nearest customs office or from U.S. Customs, P.O. Box 7148, Washington, D.C. 20044.

TREASURY. Treasury regulations prohibit the unlicensed purchase or importation of merchandise of Cuban, North Korean, North Vietnamese and Rhodesian origin. For information, write to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220.

AGRICULTURE. Your reentry into the United States will be expedited if you bring with you NO foreign meat, other animal products, fruits, vegetables, plants, soil, or other agricultural items. It is unlawful to import foreign agricultural items without permission, since they may be the means of introducing destructive plant or animal pests and diseases. For specific information, write "Quarantines," U.S. Department of Agriculture, Hyattsville, Maryland 20782.

SEPTEMBER 14, 1972

MISS FRANCES G. KNIGHT,
Director, Passport Office,
Department of State, Washington, D.C.

DEAR MISS KNIGHT: In response to my letter of August 15 I have received the September 12 reply of Mr. David M. Abshire together with enclosures. I wish to express my appreciation for the information which has been furnished.

The Committee on Internal Security has been studying the circumstances of the travel of Jane Fonda to North Vietnam in July 1972, and the broadcasts which she made to United States servicemen over Radio Hanoi. An executive session of the Committee is scheduled for 10:00 a.m. on Tuesday, September 19, 1972 in Room 311 of the Cannon House Office Building, at which time the Committee will take the Fonda matter under further advisement. I am hopeful that some solutions will be developed which will in the future effectively prevent the adversities resulting from activities such as those engaged in by Miss Fonda. The material enclosed with the letter of Mr. Abshire seems to indicate some conflict and uncertainty in the administration of the statutes and regulations pertaining to the issuance and use of passports for travel to North Vietnam.

Realizing that the period of notice is very brief, I would indeed be grateful if you could appear before the Committee next Tuesday morning to give us the benefit of your experience concerning the difficulties inherent in restricting the travel of United States citizens to countries with which we are engaged in armed conflict.

Sincerely,

RICHARD H. ICHORD, *Chairman.*

The CHAIRMAN. Mr. Johnson, will you please be seated?

Mr. JOHNSON. Yes, sir.

(Biographical data furnished by Mr. Johnson follows:)

ROBERT D. JOHNSON

He was born in Philadelphia, Pennsylvania on February 10, 1908. He received his law degree from the South Jersey Law School (now Rutgers University) in 1930; served his clerkship under the Honorable William C. French, Camden, N.J. He was in private practice from 1932-36. He was with the U.S. Post Office Department from 1936-41. He enlisted in the U.S. Army as a private in 1941 and served overseas for the U.S. Army. In 1946, he was released from active service as a captain after serving four years overseas.

Subsequently, he joined the Veterans Administration and from 1946-51 served as attorney adviser and legal consultant to the Board of Veteran Appeals at Washington, D.C. He entered the Department of State in January 1951. In February 1955 he was assigned to the Passport Office. He is now the Deputy Director and Chief Counsel of the Passport Office and has been such since December 1964.

TESTIMONY OF ROBERT JOHNSON, DEPUTY DIRECTOR, PASSPORT OFFICE, DEPARTMENT OF STATE, ACCOMPANIED BY JAMES F. BROOKS, SPECIAL ASSISTANT TO THE DIRECTOR, PASSPORT OFFICE

The CHAIRMAN. It is a pleasure to welcome you to the committee. I have also already put into the record the letters inviting Mrs. Knight and explaining that Mrs. Knight is out of the country and you are here in her place.

Do you have a prepared statement in response to the invitation, Mr. Johnson?

Mr. JOHNSON. No, sir, Mr. Chairman. I was talking to Mr. Sanders by telephone and he told me he would probably need some technical advice and he would ask me to answer questions on that matter.

This is James F. Brooks. He is a Special Assistant to the Director of our office. He used to work with me closely on the Communists down there in the Passport Office when we handled them, and so forth, and he is very knowledgeable on this matter, too, along with myself.

The CHAIRMAN. Thank you. It is a pleasure to have you both before the committee.

Mr. JOHNSON, first for the record, would you explain to the committee the statutory basis for State Department issuance of passports and the control of passports?

Mr. JOHNSON. The basic law is contained in 22 U.S.C. 211a and that is the authority for the issuance of passports. I have it right here.

The Secretary of State may grant and issue passports and cause passports to be granted, issued and verified in foreign countries by diplomatic representatives of the United States and by such consul generals or vice consuls when in charge whom the Secretary may designate.

Then it proceeds to state that passports may also be issued by the chief executive officers of the—well, at that time, at the time of the statute the outlying territories, Puerto Rico, the Virgin Islands, and so forth. Then it also provides that the Secretary may issue passports under such rules as the President may prescribe.

This is the basis for the Secretary's regulations in line with this statute.

The CHAIRMAN. That is your statutory basis. Now would you explain in detail the regulations which have been issued by the Department of State to implement the statute?

Mr. JOHNSON. The regulations are contained in title 22 of the Code of Federal Regulations and the particular ones involved are section 51.72, 51.73. Basically section 51.72 provides for the invalidation of passports for certain areas, restricted areas.

Now I think it is a very brief regulation and I will read it for you.

Upon determination by the Secretary of State that a country or area is, one, a country with which the United States is at war, a country or area where armed hostilities are in progress, or a country or area to which travel must be restricted in a national interest because such travel would seriously impair the conduct of U.S. foreign relations.

Now that particular section (C) is the one that we are involved with here today, I am sure. A country or area to which travel must be restricted in national interest because such travel would seriously impair the conduct of U.S. foreign affairs. Then the U.S. passport shall cease to be valid for travel into or through such country or area unless specifically validated therefor, any determination made under this section shall be published in the *Federal Register*, et cetera.

Now this is your basic authority for the invalidation of a passport for restricted areas.

The CHAIRMAN. You say there has been a prohibition of travel to certain countries?

Mr. JOHNSON. Yes, sir. At the present time passports are not valid for travel to Cuba, North Korea, and North Vietnam, unless they bear a special validation authorizing such travel.

The CHAIRMAN. Now 51.72 is the specific regulation that enables the State Department to impose this prohibition?

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. And the statutory basis for the regulation has been given heretofore?

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. Let me ask you this, Mr. Johnson: Is there any decisional law in conflict with the existing prohibition to travel?

Mr. JOHNSON. Well, there are no decisions in conflict with it. The Zemel case¹ which reached the Supreme Court of the United States upheld this authority. I will briefly recite the facts in the case.

Zemel applied for travel to Cuba. He wanted to go to Cuba. The Secretary denied the validation. So this is a very interesting case. We refused to issue him a passport and the Supreme Court in Zemel said that the Secretary did have the authority to grant or withhold a validation of a passport and the Secretary could refuse to validate a passport.

So there is no conflict. The law, the Supreme Court decision in Zemel is very clear.

The CHAIRMAN. Let me ask you this: In a memorandum that your office has supplied to the Committee on Internal Security it states as follows:

A notice given to United States passport holders consists of the following, notice consists of a public notice published in the Federal Register on March 24, 1972, the Secretary of State, restricting the use of passports for traveling into or through North Vietnam unless properly validated; (B), the following legend which occurs on page 4 of all current United States passports [including passports issued to Miss Fonda]: "U.S. courts have interpreted U.S. law in effect on the date this passport is issued as not restricting the travel of a U.S. citizen to any foreign country or area."

Now is that language included in the passport?

Mr. JOHNSON. Yes, sir. I have a mockup of a passport that I brought up with the exact wording of the notice that you just read. That is substantially correct.

The CHAIRMAN. Aren't those court decisions in conflict with the regulation and if they are not, how are they not in conflict?

Mr. JOHNSON. The crux of the whole matter is this: If a person travels to a restricted area, like the case of Fonda, she goes to North Vietnam and she doesn't come into the State Department for a validation of her travel to Vietnam.

(At this point Mr. Thompson left the hearing room.)

She goes there and there is nothing in the passport to indicate that she traveled to Vietnam. This section has been interpreted as being the use of a passport which is prohibited. Now in the Lynd² case, he traveled to North Vietnam, and the Justice Department prosecuted him under—no, they didn't prosecute. I am getting confused with another case I had.

He traveled to Vietnam, we revoked his passport in the Passport Office. He refused to give assurances if we gave him a passport that he would not use the passport for travel again to a restricted area. The Court of Appeals in the District of Columbia, here, held that while we could restrict the use of the passport itself, we could not control the travel of the individual. Do you see the distinction, Mr. Chairman?

The CHAIRMAN. Yes. When an individual desires a passport, he is not required to state every country to which he specifically intends to travel; is that correct?

¹ See appendix, pp. 7695-7734.

² See appendix, pp. 7751-7760.

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. Now if Jane Fonda, for example, obtained a passport to travel to the country of France specifically validated for that and then that passport was not used, was not used for travel to a country which is prohibited, such as North Vietnam, there would be no offense committed under the regulations?

Mr. JOHNSON. That's right, sir.

The CHAIRMAN. Now if that passport were used in some manner, there would be an offense?

Mr. JOHNSON. Yes, sir. As a matter of fact on that very point is the Laub¹ case. It was a Supreme Court case. Laub traveled to Cuba without validation of his passport and the Justice Department prosecuted him under the travel control regulations, leaving the United States without a valid passport under 8 U.S.C. 1185(B), what we call the travel control regulations, you can't leave the United States unless you have a valid passport. Now Justice went on the theory since this passport was not validated for travel to Cuba, he violated that particular statute.

Do you see the point I am making, Mr. Chairman?

The CHAIRMAN. By what documentary means would an individual travel from a permissible country to one which is banned? What would be the documents that are used to travel once he traveled to a permissible country?

Mr. JOHNSON. They need a U.S. passport to travel to the country. Now going back on my experience, these communist countries make arrangements with the traveler. They are persona grata with the country involved and this applies to the whole communist setup. They don't bother stamping your passport at all. They will give you a visa, but even when they issue a visa, they will put it on a separate piece of paper for you.

Now Dellinger and this Cora Weiss and Ramsey Clark and Fonda and all these people that have traveled to Vietnam, they have gone the same route. They don't bother. The same way in the old days years ago when these students would travel to communist youth festivals, they would gravitate to the Soviet Union and the first thing you know they are in Communist China when travel was restricted to Communist China.

But what they do—the Soviets and the Chinese would pick up their passports and then they would issue them visas on separate pieces of paper, like entry visas, resident visas, and exit visas. This is the bane of our existence on this particular law and regulation.

The CHAIRMAN. The means of travel is issued by the host country?

Mr. JOHNSON. That's right.

The CHAIRMAN. Of course there would be a possibility, would there not, of a violation of the regulation if a host country picked up their American passport?

Mr. JOHNSON. How can you—you would have to prove that. It is an evidentiary matter.

The CHAIRMAN. I can well understand the difficulties of proof.

Mr. JOHNSON. Out in California, I think it was L.A. or the Southern District of California where one of these characters went to Cuba and the Cubans accidentally stamped his passport; he had a Cuban visa

¹ See appendix, pp. 7735-7750.

and a passport and he had an entry stamp in Cuba. But the U.S. attorney out there declined prosecution because you could not prove these were official stamps of the Cuban Government.

Now there are bills here in the Congress—Do you want me to go on? I am sort of anticipating.

The CHAIRMAN. First let's get to the Jane Fonda matter.

You have provided the committee with details concerning the issuance and the use of Jane Fonda's passport and her travel to North Vietnam during the month of July.

Mr. JOHNSON. Yes. Jane Fonda was issued passport No. C1478434 in her legal name of Jane Seymour Plemiannikov on June 23, 1972.

The CHAIRMAN. At that point, Mr. Johnson, you indicated her maiden name. Is she married?

Mr. JOHNSON. Yes, sir.

The CHAIRMAN. That is not the name of her father.

Mr. JOHNSON. Her father was Henry Fonda and her mother was named Seymour, I think. He was born in Nebraska and I think the mother was born in Canada. Then she married this Russian I think in 1967.

The CHAIRMAN. Is she married to a Russian citizen or just a person with a Russian name?

Mr. JOHNSON. He is not a U.S. citizen, according to the application. I think this is one of those movie individuals, Roger Vadim. I think he goes under the name of Roger Vadim. He drops off the Plemiannikov. He married her in August of 1967, according to the application. There is no indication in the Department's file that Miss Fonda ever applied for a validation of her U.S. passport in order to travel in North Vietnam. There is absolutely no information.

Upon Miss Fonda's return to the United States we were advised of her arrival by the Immigration and Naturalization Service at Kennedy. We requested the Immigration people to examine her passport very carefully and the detailed examination of her passport failed to show any evidence of admission to or exit from North Vietnam. Since no incriminating evidence was found on her passport, her passport was stamped by the Immigration Service up at Kennedy to show her reentry and returned to her.

So far we have no evidence whatsoever showing that Miss Fonda used the passport to travel to or in Vietnam. I might say that we have made a check of the Department's records and we could find no record of the use of the passport.

The CHAIRMAN. In view of the way they travel to North Vietnam, it would be a very unusual case that a passport would show any evidence of travel to North Vietnam?

Mr. JOHNSON. That's right.

The CHAIRMAN. In view of the national publicity concerning her travel to North Vietnam, what action, if any, was taken by INS or the Passport Office upon her return to this country?

Mr. JOHNSON. Sir, since we had no evidence of the use of the passport, our hands are tied under these present laws and regulations.

The CHAIRMAN. Would you actually be in a position to take any action in the event that you were furnished with evidence?

Mr. JOHNSON. If she used the passport, then I think she could be prosecuted under 18 U.S. Code 1544. That section concerns the use

of the passport in violation of the restrictions contained therein. I will read that section to you. Now this:

Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports; * * *

I think it provides a criminal penalty of \$2,000 fine or imprisonment of not more than 5 years, or both.

The CHAIRMAN. I take it, under the circumstances, there has not been any action taken to recommend prosecution of Fonda by your Department?

Mr. JOHNSON. No, sir. I can't speak for the State Department, sir.

The CHAIRMAN. None by the Passport Office?

Mr. JOHNSON. That's right.

The CHAIRMAN. To what extent has the Passport Office examined the statements that are submitted by an applicant for a passport?

Mr. JOHNSON. We examine very carefully if the person indicates he is going to travel to Hanoi or North Korea or Cuba, and so forth. We would hold up the issuance of a passport. We would certainly not issue a passport for them. There are certain criteria under which we can validate a passport for travel to Vietnam and travel to these restricted areas. That is provided for in our regulations, too.

The CHAIRMAN. Who would issue such a passport that validates travel to Vietnam?

Mr. JOHNSON. The way it works, the procedure in the State Department is we are more or less a channel of communication between the applicant and the State Department. So they come in and they apply and they give their reasons for going. We submit it to the political desk, the desk in turn makes their decision and then they forward it to the Bureau of Security and Consular Affairs in the State Department and they are the ones that make the ultimate decision. They notify us that the validation has been granted, it has not been granted, or they need additional information.

So we in the Passport Office actually only perform the mechanical operation of validating the passport. We put an endorsement in the passport saying this passport is valid for one roundtrip to Cuba or one roundtrip to Hanoi or to North Vietnam or wherever the person is going.

The CHAIRMAN. To your knowledge did Ramsey Clark in his recent trip to North Vietnam apply for any passport to North Vietnam? Did he have any special clearance or waiver?

Mr. JOHNSON. Mr. Clark applied for a passport, but he never did apply for validation for travel to North Vietnam, no, sir.

The CHAIRMAN. So where was his validated?

Mr. JOHNSON. Ramsey Clark was issued passport No. A345296 on February 24, 1970, and in that application he said he wished to visit Sweden. That was issued February 24, 1970.

The CHAIRMAN. Do you have any knowledge of how he traveled to North Vietnam?

Mr. JOHNSON. No, sir, all I know is what I read in the newspapers.

The CHAIRMAN. What is the basis for the issuance of a U.S. passport? Is that strictly citizenship?

Mr. JOHNSON. Yes, citizenship and identity. When you apply for a passport, you have to produce a birth certificate or baptismal records or other evidence showing that you are a U.S. citizen. You must identify yourself as the person whom you say you are or related to the birth certificate, nationality, and then two photographs and that is it.

The CHAIRMAN. You can get a U.S. passport without necessarily being a U.S. citizen, can't you?

Mr. JOHNSON. No, U.S. passports can only be issued to U.S. citizens, or U.S. nationals. That would cover the people out in some of the Insular Possessions.

The CHAIRMAN. It appears to me, Mr. Johnson, that under the existing statutes and under the regulations and the court decisions, the Passport Office has its hands tied insofar as travel to any of the prohibited countries is concerned?

Mr. JOHNSON. That's right. But we have made recommendations and our recommendations have never been followed.

The CHAIRMAN. What recommendations have you made?

Mr. JOHNSON. We recommended that travel to a restricted area, whether you use or don't use your passport, would be a violation of the law because you have to consider that it is not in the national interest to travel to these areas.

The CHAIRMAN. How do you feel that restriction should come about? Do you feel it should be an absolute prohibition of travel to certain countries or do you feel that there should be some flexibility for travel by U.S. citizens to prohibited countries for special purposes?

Mr. JOHNSON. I think the legislation should provide that anyone who travels to an area without a validation of the passport or without so-called permission should be in violation of the law.

Now whether that would stand constitutional tests or not is open to question. There have been various bills introduced in the Congress on this very point, travel to and/or through a restricted country. Now this is important because some people say travel to a country—travel to does not necessarily mean you went into the country, or you could go through the country.

The CHAIRMAN. Don't you think it would need to be done by a statute authorizing regulations rather than an absolute prohibition by statute, that is, when you get into difficulty if you merely legislated prohibiting travel to such countries with which the United States has had hostilities, wouldn't you have trouble defining what constitutes hostilities? Would there be a question of when do you go into hostilities with a nation?

Mr. JOHNSON. I don't think that would be vague. You see, the country with which the United States is at war, the country or area where hostilities are in progress, I think that would cover what you are talking about; for example, during the recent Arab-Israeli conflict a few years ago we invalidated passports for travel there by American citizens. We felt we were trying to get the American citizens who reside in those countries out and we thought there would be a lot of controversy if we let other American citizens go in.

The CHAIRMAN. Did your office prepare any specific bill for accomplishing this purpose or did you just make the recommendation in general terms?

Mr. JOHNSON. We made the recommendation in general terms, sir.

The CHAIRMAN. I have been considering the drafting of such legislation, Mr. Johnson, and I have prepared language that would accomplish the effect which you have recommended. The language reads as follows:

The President may restrict travel or authorize such travel when he deems it in the national interest by citizens and nationals of the United States to, in or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States. Such restrictions shall be announced by public notice which shall be published in the Federal Register. It shall be unlawful for any citizen or national of the United States willfully to travel to, in or through any country or area to which travel is restricted pursuant to this subsection.

Do you feel that language of that nature would be sufficient to accomplish what you have in mind?

Mr. JOHNSON. Yes, sir. Of course, this is my personal opinion though. I am under restrictions from the State Department.

The CHAIRMAN. I understand.

Mr. JOHNSON. Personal view, yes.

The CHAIRMAN. I have some questions about the language or at least the form of the language in that it does not specifically provide for a waiver of such restriction in the event that the national interests of the United States would require such travel.

Mr. JOHNSON. You could always put a proviso in there to say "in the national interests." Despite this the Secretary of State or the President could prescribe rules for the validation of travel through that area. The control should be in the passport, I feel myself.

The CHAIRMAN. What about the notice in the *Federal Register*? Is that sufficient?

Mr. JOHNSON. Yes, that is sufficient; yes, sir.

The CHAIRMAN. Would you also have notice on the passport itself?

Mr. JOHNSON. On the passport itself. The average American never heard of the *Federal Register*, you know, and last year we issued 2,396,000 passports. This year we will probably go about 10 or 12 percent above that, so we will probably issue 2.7 million passports.

The CHAIRMAN. Thank you very much, Mr. Johnson and Mr. Brooks. It is now 5 minutes after 12. Your testimony has been very helpful in answering some of the questions I had.

I would state to you it is my intent to, either today or tomorrow, introduce such legislation which I hope can be considered promptly by the Congress.

I will ask chief counsel if he has any questions.

Mr. SANDERS. Mr. Johnson, has the State Department validated passports to North Vietnam?

Mr. JOHNSON. Yes, sir.

Mr. SANDERS. Are there any recent ones that would be within your recollection that you could mention?

Mr. JOHNSON. We could submit that information to you, but I don't recall; most of those that have been validated are in the newspaper field, like CBS, UPI, AP, and the like. But I don't think there have been too many of them; I mean other than the newspaper people, the journalists.

Mr. SANDERS. Would you know offhand whether the mother and wife of the just recently released POWs had passports validated?

Mr. JOHNSON. Yes. Minnie Lee Gartley had no validation, and Olga Charles, she is the wife of the Navy boy, I think she had no validation, and this William Sloane Coffin, Jr., the chaplain of Yale University, he didn't have a validation.

The CHAIRMAN. Who did have validation in that trip?

Mr. JOHNSON. As far as we know, none of them has.

Mr. SANDERS. I have before me a book entitled *Night Flight to Hanoi*, authored by Daniel Berrigan. In the preface on page 10, apparently discussing an anticipated trip to North Vietnam, he says that he received a visit from a State Department man in Averell Harriman's office; "he offered to validate our passports for travel to North Vietnam, an officially forbidden destination."

Does this ring any familiarity to you?

Mr. JOHNSON. No. I don't get to Mr. Harriman's office very often.

The CHAIRMAN. Thank you very much.

Mr. White.

Mr. WHITE. Mr. Johnson, in the event that we should have legislation in this area as suggested by the chairman, would you consider it desirable that the language of this legislation be broad enough to give us control of travel in any country or any area where hostilities might exist?

Mr. JOHNSON. Oh, absolutely, because like I have just mentioned, the Israeli-Arab conflict. We had quite a few applications for validations. They heard so many properties were bombed they wanted to go to the country and see how much damage was done. In the meantime we were trying to get Americans out of there. We had a terrible time getting them out; we had all kinds of plans and everything else, and emergency evacuation procedures.

Mr. WHITE. What would you think of language which would also give us control of travel to countries with whom we might be engaged in hostilities in some third country, for example, control over travel to Soviet Russia, although we might be engaged in hostilities in Czechoslovakia with them?

Mr. JOHNSON. I think you have something like the national interest and this is a crux—national interest, or interference with the conduct of foreign relations of the United States, you tie in foreign relations and hostilities, and so forth, you are on safe grounds.

The CHAIRMAN. Thank you, Mr. White.

I specifically mentioned the prohibition of travel to countries with which the United States was at hostilities. I realize that your office and the United States Government have been caused considerable problems by travel to areas where there may be some type of hostilities to which the United States might not be a part; I would certainly consider easing the administration of your duties. But I am a little dubious as to how far we should go, whether we should go any farther than a country with which the United States is at hostilities because of the attitude of the courts on the right of travel being a constitutional right of an American citizen.

I am a little concerned about going too far.

Mr. JOHNSON. Then you get the mercenaries, the Americans going over to fight on one side or the other. Did you ever think of that, Mr. Chairman?

The CHAIRMAN. That has been done in the past. Of course, there has been no statutory prohibition of the same.

Thank you very much again, Mr. Johnson.

The meeting will be adjourned until further call of the Chair.

(Whereupon, at 12:10 p.m., September 19, 1972, the committee recessed, to reconvene at the call of the Chair.)

PSYCHOLOGICAL WARFARE ANALYSES

(The biographical data and analyses of Edward Hunter, Francis M. Watson, Jr., and General S. L. A. Marshall, respectively, referred to by the chairman on page 7559, follow:)

EDWARD HUNTER

Mr. Hunter served as a propaganda specialist with the Office of Strategic Services during World War II. Later, from an intermediary agency called the Strategic Services Unit of the U.S. Army, he went to the CIA when it was organized. In Japan, prior to World War II, he served as a newspaperman and foreign correspondent. Following the period in Japan, he was editor of various newspapers in China, one of which he took over on the expulsion of the Communists from Hankow.

Later he witnessed not only the creation of the puppet state of Manchukuo, but covered the invasion of Ethiopia by Mussolini and two civil wars in Spain. He also served the U.S. Government abroad as a propaganda specialist, including the Korean war theatre. He learned about the new techniques of psychological warfare from the inside.

He is a leading authority on the techniques of Communism. He put the word, "brainwashing" into our language, and what was more important, alerted our people to its content as the name for an especially vicious form of modernized so-called "rationalized" warfare. His basic books on the subject are classics, and include "Brain-Washing in Red China" and "Brainwashing: Pavlov to Powers." He also is the author of "In Many Voices: Our Fabulous Foreign-Language Press," and "The Black Book on Red China."

Warren R. Austin, our first ambassador to the United Nations, declared in 1958 in reference to Mr. Hunter's "Black Book on Red China"; "This is the first time that the crimes committed by the so-called People's Republic of China against the Chinese people they claim to represent—and against their neighbors and all free men—are documented under one cover." The authoritative textbook, "American Journalism," by Frank Luther Mott, published as far back as 1941, paid tribute to Mr. Hunter with the statement, "though threatened with death if he investigated the rumor of a wholesale massacre of peasants (in Manchuria) by the Japanese, (he) got firsthand information and wrote a report which was later made a part of the records of the League of Nations."

He has served as a consultant and as a staff member for various members of the Congress and Congressional committees, as a psychological warfare specialist in the Pentagon, and for various government agencies at home and abroad.

At present, Mr. Hunter is publisher and editor of the monthly magazine, *Tactics*, a professional, technical publication in the field of cold-hot (psychological) war. Mr. Hunter lives at 4114 North Fourth Street, Arlington, Virginia.

ANALYSIS OF JANE FONDA ACTIVITIES IN NORTH VIETNAM

By Edward Hunter, Publisher and Editor, *TACTICS*

I had the opportunity as part of my responsibility in World War II to review and analyze enemy propaganda for the U.S. Government. This came in many forms, from radio broadcasts directed at Allied forces and publics, to enemy films and photos, devised to weaken and subvert morale on our side. My classification was cleared for any material in this field. My duties were operational.

My special focus was on what is technically called clandestine or covert propaganda, popularly known as "black propaganda". This is contrasted with what is called overt propaganda, popularly known as "white".

The overt, as its name implies, is aboveboard, and truthfully reveals its source, which usually is itself. The Voice of America is an overt propaganda source; it frankly discloses its source as the American Government.

Covert propaganda, which naturally is much more effective, conceals its true source, and creates the impression that it emanates from the other side. When something the Allies produced in World War II was issued as an Axis message, it was a successful covert operation. The fake Free Poland radio station set up by Moscow on Soviet soil toward the close of World War II, aimed at the Polish people, was such a "black" operation.

Material produced in a government office, and secretly passed along by it to some outside enterprise in private life to give to the press, as if it were its own product, concealing the government's primary role, is called "gray". A source that issues a statement or document as its own, when it actually comes from some other source on the same side, is said to be engaging in a "gray" operation.

Troops ordinarily discount anything known to come from the enemy's side. They know that the enemy has a harmful intent in telling it. The enemy knows this, and so a number of devices are concocted to lend credibility to what emanates from its territory. When such material contains names and gossip, for instance, from within one's own regiment, it achieves the desired purpose, injuring morale. How did the enemy find out those details? Who is the traitor in their midst, or even more disturbing, at headquarters? Such questions are sure to arise in the men's minds with a destructive impact on morale.

These very personal details, unimportant in themselves, have an impact favorable to the enemy's psychological warfare way out of proportion to their true significance. They lend credibility to whatever else the enemy says, forcing attention by those who otherwise would ignore such broadcasts, and making lies palatable.

The enemy seeks to add credibility to its propaganda, too, by putting an American citizen before the microphone, and by having him or her address the American troops. The purpose is the same as when everyday gossip from within one's own military camp is told by the enemy over its own radio. When a change in personnel or location can be told the troops before they have been informed themselves, the impact is even greater. When the American citizen, especially one with the glamour and the prestige value of a Jane Fonda, can travel back and forth between the United States and the enemy capital without interference or arrest by the American authorities, the effect on military morale is bad to devastating.

What comes from a source on one's own side commands attention, under any circumstance. When the enemy can obtain the assistance of a national of the country it is fighting, to propagate its material in his or her own country, and also to broadcast it personally over the enemy's radio, going to its capital city to do so, it has achieved a form of war propaganda for which as yet there is no professional term—except, perhaps, the old fashioned word, treason. Both the “white” and “black” propaganda forms are combined in it with great subtlety.

The most appropriate term for this might be “enemy blue”, a term that just now arises in my mind. A new label surely is needed, for what we have is an expanded kind of warfare, with a new dimension added to it—the psychological—although it is yet to receive legislative or judicial recognition, in spite of its obvious existence.

The effect on Americans stationed in the Asian theatres, within hearing distance, or in reach of propaganda leaflets, pamphlets, or other materials in which her statements are quoted, are obviously expected to be injurious to stamina and morale. The question is only whether the communists have achieved this objective. A study of this approach, that takes advantage of our leniency unparalleled in military annals, shows that damage must certainly have been inflicted by it. Indeed, Fonda's impact is certainly greater than the achievements of a Tokyo Rose in World War II, or even a Hanoi Hanna of the early period of the Vietnam warfare. Fonda has taken this technique a big step forward, proportionate to the new “psywar” dimension in modern warfare, by being able to operate both on her own soil and in communist areas. Once we entered World War II, neither Germany or Japan had this advantage.

Jane Fonda seriously assaulted the stamina of any fighting American listening to her highly dramatic and professional war propaganda. An incalculable number of Americans must have been more or less shaken. The impact of war propaganda is frequently a delayed reaction, that rises to the surface during a period of fatigue, frustration or personal danger. Jane Fonda's emotional outpourings were particularly attuned to this characteristic.

The price we will be paying will be exacted in many cases after Americans return to the United States, and confront some situation or environment that exploits this vulnerability. What we are witnessing in the United States today is a development by Reds of a psychological warfare program that will follow through on all such opportunities. It is being planned scientifically this way.

Factors that lead to these conclusions, as they come to mind after my survey of the Fonda material, include the following:

Whether we recognize it or not, it exists! The enemy's objective is to prevent us, by all means within its power, from

giving legislative or judicial recognition to this new psychological dimension that has been added to traditional warfare. Your Committee—the House Committee on Internal Security—and other committees of the Congress, experience this kind of pressure, for whenever they have made an effort to delve into this problem, the roof has fallen in on them. Yet, so far as psychological warfare—“psywar”—is concerned, failure to recognize this new dimension shields the enemy in its attack. The stamina and morale of our manpower is left defenseless, by default. This is the framework in which the Jane Fondas operate.

A blind man may refuse to recognize the existence of a lighted candle because he can not see it, but that does not change the fact of the candle's existence. He can be burned by it, exactly as our nation is being burned, only on a commensurately greater scale.

The natural tendency when hearing a source on one's own side is to give it fair consideration, assuming that the intent, at least, is to tell the truth. When the enemy can exploit such a natural reaction, planting its own propaganda in the mouth of such a person, the impact can be devastating. This ordinarily can be accomplished only rarely, though, and usually at high cost. The gain though, is well worth practically any expenditure. The price of “black” propaganda hitherto often included lives. The new dimension added to war has made all that quite cheap for the enemy, when employed against us. The enemy will permit none of it on its own side; it is wholly a unilateral phenomenon, all take and no give by the foe. Its psychological warfare within the United States has enabled it, so far, to retain this advantage that is unprecedented in the annals of warfare down all of history, and which cannot help but be lethal to the target country, if allowed to persist.

I have just read and analyzed the text of the numerous statements, interviews and broadcasts made by Jane Fonda during her July, 1972 trip to North Vietnam. This survey will therefore be limited to her activities, and her impact, particularly on American troops in Vietnam. Her broadcasts to the American forces and the Vietnamese and her declarations made during that journey continue to be put on the air, directed at U.S. troops and the Vietnamese, after her departure. The enemy obviously recognizes this as highly suitable for exploitation as propaganda weaponry against the Americans, the South Vietnamese, and others helping us.

1) *Identification*

Jane Fonda is not restricted to the scene of her operations, on enemy soil, as was Tokyo Rose, sure to be arrested and prosecuted upon her return to the United States. She is able to pursue her propaganda work in her native land, that is the target of communist international operations, while supporting Hanoi's position on every issue. The mind of an American soldier in Vietnam is attacked this way from front and rear.

The enemy is not only in front of him, but behind him, in his homeland. At the same time, those whom he is fighting are being portrayed to him as not really the enemy.

If this weren't so, they obviously would be arrested, wouldn't they? This is the confused picture that is being presented to the typical soldier, who is forced to do the fighting and the dying. Such a moral dilemma can lead only to at least frustration. The ready outlet for frustration in Vietnam has been readily at hand and cheap—heroin, and he has heard how it is waiting for him back home in the U.S., too. The soldier gets no respite for his frustrations unless such questioning can be resolved. He does not deal with theory but with the actuality of war. When he returns, the distinction between friend and foe already will have become dim, blurred by the malignant appeals over Radio Hanoi. Such broadcasts and other activities of Fonda constitute a propaganda pressure in which foe becomes friend, making foes of one's friends. This is how propaganda warfare is designed to work. Identification is subtly switched about by this new, sophisticated approach which we have left practically unresisted in the hands of the enemy.

2) *Coordination*

Jane Fonda's broadcasts and declarations parallel, in the points she stressed and in what she did not mention, precisely what the enemy was insisting upon, or ignoring. This dual approach, in addition, coincided with the line that was being followed in the United States itself, by important or dominant segments in our intellectual life, ranging from the press and radio-television to academicians and the clergy. The same messages were being pounded into his ears no matter where he turned, toward the United States or toward North Vietnam.

The American soldier heard what she said, and then saw or heard it repeated by prominent American figures, even in our legislatures. He became the target of this practically unprecedented form of war called psychological warfare, that continues the old, while adding the new dimension to it. A man's stamina must be strong, indeed, to be able to resist such traumatic assault upon it without some conscious or subconscious impact being inflicted. Jane Fonda's activities and words were fit scientifically into this context. A so-called "peace front" at home was being coordinated with the fighting front abroad, with its "psywar" adjuncts.

3) *Reinforcements and orchestration*

Two of the most forceful tactics in a propaganda warfare assault on troops require precisely the contribution made by Fonda. The one is reinforcement. When a soldier hears something from his own as well as the enemy's side, this is the strongest possible reinforcement. The enemy's contentions are provided by it with a false quality of credibility that is very difficult to disprove. No such advantage accrues to his own side. Instead, he hears what the enemy says being repeated by his fellow nationals.

The other tactic, also reinforced by Fonda, is orchestration. When the same propaganda line is heard practically everywhere one turns, whether on one's own side or the other, this is orchestration. It reaches its most effective form in propaganda warfare. Jane Fonda serves to round out this operation for the enemy by her appearances in North Vietnam.

Orchestration of a pro-Red nature is so developed in the United States that the echoing of Hanoi's line, especially when enunciated by Jane Fonda, becomes almost automatic.

4) *Professionalism*

Jane Fonda's broadcasts and other declarations made in North Vietnam fit neatly into the up-to-the-minute, Communist Party line, and were tactically adapted to the most recent developments in the fighting and "peace" sectors. They were visibly the product of communist psychological warfare planning. Their wording was highly professional in structure and aims. Her varied talks and statements dove-tailed, with her arguments adapted to different audiences. Her operations were those of a team member in the enemy's "psywar" organization.

Examples of all of this can be found in her monitored broadcasts and in the other statements she made during her travels in enemy territory, as compared to what was being declared by pro-Red sources elsewhere, even in the United States. Intelligence material on what was happening in South Vietnam and in the United States had to have been made available to her promptly, for her material to conform so neatly to the enemy's "psywar" program and needs.

Orchestration and reinforcement characterized her entire output, constituting a coordinated operation that could only blur the line between friend and foe, confusing and identifying foe as friend, in the minds of her soldier-targets. Whether they listened to her as actress or as propagandist made no difference to the foe, so long as they listened.

Any soldier who listened, or read her crisp, dramatic presentations, could not help but be at least subtly affected, in present or future attitudes. His defense depended on his having received special training, to equip him to withstand such psychological combat.

Firstly, he would have to be knowledgeable in communist tactics. Practically all were too young to have had the time or opportunity for the exhaustive study required. This is true, too, for the men who have not had a special professional need—and time—to obtain such background.

Second, and this is the protective device that is most effective when the soldier has not received extensive, specific training, to develop an attitude of disbelief and unconcern over anything that came from an enemy source, properly assuming that whatever the enemy said or did, he meant by it no good for our side. He would have to know that the enemy would not hesitate under any circumstances to twist or fabricate any piece of information, and that this would be the same whether

the voice heard on the enemy side were that of an American citizen or not. Whoever was being used as a channel for the propaganda would be supplied with plenty of the most up-to-date intelligence to make sure that whatever he or she said would sound credible. Fortunately this negative attitude toward the enemy is the healthy safeguard soldiers are most likely to employ. They immunize themselves this way against weakening influence of scientifically formulated enemy propaganda.

This is the average man's natural safeguard under normal circumstances, but the new dimension that has been added to modern warfare confuses and makes these circumstances peculiar or difficult to detect. The enemy's success in enlisting Americans who possess what is called "prestige value" to help in the execution of its propaganda warfare catches the target-soldier off balance. He does not anticipate being deceived and lied to by fellow Americans. His stamina, therefore, is more likely to be shaken. In war time, this is tantamount to being wounded. A psychological casualty is as advantageous, or more so to the enemy as any other kind. The enemy finds its best use for such as Jane Fonda in this area of service.

Examples of the reinforcement tactic were plentiful, and illustrated the manner in which the Red propaganda tacticians carefully coordinate issues. The obvious, of course, was opposition to Richard Nixon in the presidential race, accusing him of causing the deaths of American pilots "in a last, desperate gamble to keep his office come November." Fonda also told the fliers that the American people back home opposed the war and wanted them to return, a tempting thought for those whom our *anti*-anticommunist policy leave perplexed as to the reason for the war.

Her broadcasts and statements at Hanoi reinforced and coordinated major issues that the communists are propagandizing in the United States and elsewhere. Paramount, of course, is the line that South Vietnam's President Thieu must be dumped. She accused him of mass arrests of "tens of thousands of people" who were supposedly demonstrating "for peace" in South Vietnam. She reported, without having gone to South Vietnam, what its people were saying and thinking. Her prestige value as a famous actress helped inject her subversive suggestions into the heads of her target audience.

Recently, the communist propaganda machine has been conducting a campaign to condemn President Truman because of his Truman Doctrine, that contributed largely to the saving of Western and Southern Europe from Red conquest. She accordingly brought this into her text, including Truman among the American leaders she criticized.

She supported the communist claims by clever use of calculating selected material such as the Pentagon Papers. She simply did not mention the invasion across the DMZ (demilitarized zone) by most of the North Vietnamese Army, but by reverse logic, she accused the United States of being the invader.

"There is an invasion taking place," she declared over the air; "It's taking place from the 7th Fleet, from the aircraft carriers, from Thailand, from Guam, but essentially from the Pentagon and the White House."

5) *Reverse Logic*

Reverse logic is perhaps her basic tactic, as it is of Marxist propaganda generally. No matter how obvious a Red crime, semantic trickery or upside down logic, in a "through the looking glass" manner, can make it appear that the aggrieved party is the culprit. The target becomes the marksman by this Orwellian approach. Reverse logic of this sort permeates all communist propaganda, as it did these effusions by Fonda.

Rarely did even Goebbels go to greater extremes of calculated distortion and propaganda lying against the United States than Fonda did during her brief month of North Vietnamese vituperation against her native land. She kept sounding the Red note of inevitable American military defeat and inevitable Red victory—a win policy becomes the desirable goal for the communists, whereas a no win policy has to be America's destiny. Indeed, she called on Americans to help this process along, of achieving a Red victory and American defeat.

She supported, in this context, Hanoi's insistence on American submission to each of its demands. We are to be permitted only to camouflage our surrender by a gradual, point-by-point acceptance of the Red demands. "There can be no compromise," she declared, meaning no compromise by the enemy, by our enemy, engaging in reverse logic to prove that the communist invasion was the same as the American Revolution. "If our country were attacked, we wouldn't compromise, we would fight to the end," she said, in a glaring although subtle non-sequitur.

The extremes to which she employed reverse logic were illustrated by her daring to refer to treason, saying "we should think very carefully" about it. She thereupon called President Nixon "a traitor to everything that the United States stands for." Dramatically, as if addressing him personally she declared: "Richard Nixon, history will one day report you as the new Hitler."

Subtly, she supported the build-up by the Reds of an Orwellian basis for the concocted charge of genocide against the United States, that we can surely anticipate, if Red psychological warfare deceptions enable communist conquest to succeed. She repeatedly used such terms as crimes, heinous crimes, and criminals—all referring to Americans and the United States. She had only the greatest praise for the North Vietnamese. Her accusations against us actually surpassed those of Tokyo Rose.

Indeed, I have just come across a news article by Clarence Page in the Chicago Tribune of September 5 that tells of the indignation of Mrs. Iva Toguri D'Aquino—the real Tokyo Rose—who was convicted of treason, sentenced to 10 years in prison and fined \$10,000, because Jane Fonda was being com-

pared to her. Wayne M. Collins, her attorney is quoted in the article as declaring: "The Japanese forced her to broadcast, but she never turned against America," pointing out that Fonda is making her broadcasts for the enemy voluntarily. "She is a damned traitor who should be thrown in jail," he added. "Jane Fonda condemns American actions all the time." He went on to say that there never was any evidence that Tokyo Rose criticized the Federal Government of the United States.

Certainly, anyone who recalls the text of Tokyo Rose's broadcasts must admit that Jane Fonda's goes far beyond what Tokyo Rose said, certainly in the actress' condemnation of the United States.

An up-to-the-minute propaganda service was rendered to the enemy by Fonda. Frequent references to the fighting at Quang Tri, the provincial capital in South Vietnam that was captured by the North Vietnam divisions in their dash across the demilitarized zone—demilitarized unilaterally, only to our side—demonstrates this.

Communist atrocities against the Quang Tri residents are an international scandal. So was the set-back to the communist divisions. Red troops, fleeing from the city, slaughtered civilian men, women and children indiscriminately along with South Vietnamese prisoners. Residents of the city significantly fled toward the South, into Saigon-controlled areas, and away from the North and Hanoi-controlled territory, even when it was American planes that were bombarding the Red troops. Nobody wanted to stay with the communists.

Yet Fonda took this opportunity to demonstrate her loyalty to the communist side. She referred to the strategic hamlets in the South where the refugees were being given a haven as "concentration camps". She indulged in the big lie that the "liberation troops"—meaning the Red divisions—occupied the province "in cooperation with the peasants . . . All the people in the province arose like birds breaking out of their cages."

These lies by an American citizen whom every movie goer knew, whose prestige had only just been shockingly enhanced by receipt of a top Hollywood award, were translated into Vietnamese. They could not be without impact on those who heard her in the South. She shifted the facts, in her English text for Americans, away from Red terror and the flight from the Reds, and the Red set-backs, to which she made no reference. She spoke, instead, of the thousands of years the Vietnamese fought for "freedom and independence" and identified this with the present fighting by the invading communists in their occupation of Quang Tri.

She made a hero out of the Vietnamese hijacker, Nguyen Thai Binh, who was killed trying to seize a plane at Saigon to go to Hanoi after returning from his education in the United States. He "wanted to do nothing more than to return to his people and fight for freedom and independence for his country," she said in a Hanoi broadcast beamed to "the Saigon students."

"We have a common enemy—U.S. imperialism", she declared, identifying herself in plain English with the enemy. "Imperialism" is a present day code word used by Reds when they specifically mean United States.

This broadcast declared that the American people were demanding acceptance of Hanoi's demands, and that "we identify with the struggle of your people," referring to the communist side. The Vietnamese who hear this—and many Americans, too—knowing that she passed freely between the United States and enemy territory, implementing her self-appointed task, could only be confused, certain that for her to be able to do this, there must be powerful influences in the American Government—wittingly or unwittingly—supporting this. Vietnamese must remember that treason inside the French Government facilitated France's defeat in Indo-China, and cannot help but equate the situation today. Too many parallels exist. Americans hearing her preach this way can only have their doubts and frustrations increased.

The soldier is the prime target of war propaganda, which becomes as effective as a bullet shot from behind him, from his own side, when the paralyzing or killing words are uttered through the mouth of an American. This becomes an especially insidious type of covert or "black" propaganda, especially so when the American propagandist on the side of the enemy insists that he or she has only the country's interest at heart. Covert propaganda of this nature also conforms to the expanded needs of the new type of warfare nowadays—psychological warfare—that embraces the shooting, as well, using guerrilla warfare tactics disguised as arson, the "executions" of police, and violence generally against civilians. Civilians are considered the same as soldiers in the manuals of "psywar."

The activities of Jane Fonda conform precisely to this format, as a text book example of it.

American Government policy is exploited by the communists to make the outpourings of Jane Fonda sound even more credible in the ears of both these classifications of modern soldiery—military and civilian targets alike. The patent fact that this constitutes conspiracy, obvious as it should be, is made difficult of comprehension because the American people have been indoctrinated in the dogma that no conspiracy exists, and Government policy makes their thesis almost impossible to combat. This is the main obstacle to recognition of the reality of modern, all-out warfare as confronted by the American people in general. It constitutes America's greatest danger for our future survival. After all, government sets the example.

The word, conspiracy, has been made practically a taboo or non-word. As the World War II psychological warfare specialist and psychiatrist, Dr. Joost A. M. Meerloo, states in his book, "Conversation and Communications", one cannot fight something for which no word exists. This is why use of the word, brainwashing, that I introduced into our lan-

guage, was fought so vigorously for so long, until the mere weight of people using it forced it into our dictionaries. The same circles that are suppressing such words nowadays as conspiracy and treason, no matter how accurately they apply, are still hushing up the word, brainwashing.

Where official policy and prestige circles effectively hush up the use of a word, and make it appear boorish and stupid to use it, it is more than as if the word did not exist. The fact named by the word, its content or reality, is denied as well.

Such words as conspiracy and treason, plain though the conspiracy be, and obvious the treason, become non-words.

When an American travels to an enemy capital, and coordinates his or her declarations with enemy needs and claims, what else can it be but conspiratorial, and what other description can apply but treasonable? Of course, this has to have a detrimental influence on stamina and morale. This impact is increased and given a respectability when the propagandist is able to go back and forth between her own and enemy soil. A legitimacy is given by government in this way to whatever she says, as if it had secret approval. What other impression can a soldier, for whom facts stand out starkly—you either live or you die—be expected to get?

The fact of the war being undeclared cannot change these realities, any more than it can eliminate the lethal qualities of a bullet or a Molotov cocktail. Congressional testimony has amply brought this out. I remember the hearings of your own House Internal Security Committee of a few years back that dealt specifically with overt acts in relation to treason, and how this extremely valuable testimony was hushed up and undercut. This text of some years back is even more timely now, because of visits of many Americans to North Vietnam. So timely, indeed, that I have reprinted large parts of it in recent issues of my magazine, *Tactics*.

My propaganda analysis of the Fonda broadcasts from Hanoi were made in the same manner as I analyzed propaganda in World War II for the Government. What I have found in her work was irrefutable evidence of intent to assault the morale and stamina of the American fighting man and the South Vietnamese soldier. Her outpourings also were translated into Vietnamese, and beamed at the South Vietnamese troops and civilians alike, to soften both up for fifth columnism and treason.

The information that an American of glamour, such as Jane Fonda, was telling them that they were on the wrong side, that they should be distrusting and opposing the Americans, and rejecting their own elected government in favor of the Viet Cong and the North Vietnamese communist forces, could even have a decisively detrimental impact in some minds. Jane Fonda's broadcast of July 21 from Hanoi to U.S. pilots was typical, in this framework.

This was essentially a wedge-driving or splitting job, with this added subtlety. She, as an American, simultaneously identified herself with the American pilots and with the side

they were fighting. Quite specifically, she identified the U.S. pilots with herself against their higher officers and against the American government. This was a tactical transfer—a transfer tactic—in which sides were transposed, the enemy becoming in our own side. Indeed, this was a highly professional piece of “psywar” propaganda.

Indeed, it is so concise and professional a job that I most strongly doubt that she wrote it herself. She had to have been working on it with the enemy. Her movements and utterances disclose skilled indoctrination—a brainwashed mind—but even so, her work in Hanoi could not have been an unassisted effort.

The listener, charmed by the voice of the “famous actress” hearing it come so appealingly from the enemy capital at Hanoi, might well have his own thoughts of war guiltily shifted entirely to himself and to the military machine to which he was attached, making it seem as if these were the source of the fighting and the cruelties of war, being convinced that the other side really consisted only of peaceloving people, busily building up, as she said, a free country, who “cannot understand what kind of people would fly over their heads and drop bombs on them.” Such inside-out logic is constructed in an appealing manner, so as to exploit the target-recipient’s best traits. What can be made to sound more rational, particularly to a calculatingly confused, war-weary mind?

No hint was contained in anything she said of any invasion having taken place of South Vietnam, or of any attack from the North across the officially agreed-upon demilitarized zone. No hint that this was accompanied by a terror campaign planned by communist “psywar” tacticians with cruel fitness. Hers was a sob-sister-type of appeal, skillfully and professionally designed to inject guilt feelings into the minds of the American officers and men. “Tonight, when you are alone, ask yourself, what are you doing?” she asked dramatically. “Do you know why you are flying these missions, collecting extra pay on Sundays?”

Yes, indeed, pay for this sort of national task, much more so, overtime pay, did seem incongruous. The injection of the element of financial compensation in terms even of overtime pay subtly suggested to the American pilots that they were hired hands, killing as a job, comparable to gangsters who collect from their bosses to “rub-out” some civilian. Indeed, she used this term, “your bosses”, with its sinister connotation, declaring that they had created militarily useless instruments of torture that were being employed against “babies and women and old people” alone. Her words well fitted the actress role in which she was raised.

She referred in this way to “pellet bombs”, containing “plastic pellets”, which she said “cannot destroy bridges or factories . . . they cannot pierce steel or cement.” The listener would have to shake himself to recall that there were any communist soldiers using any sort of weaponry at all, especially any devilishly cunning booby traps, or that any military

supplies were being sent by the Reds into South Vietnam. Her description was of an idyllic countryside, despoiled by us. "I know that if you saw and if you knew the Vietnamese under peaceful conditions, you would hate the men who are sending you on bombing missions," she declared. Thus subtly, she injected hate of their own side.

Her strictures, in common with communist-type propaganda in general, were adapted to long-range, world-wide aims, as well as to short-range, local objectives. Her message undercut the use of tactical weaponry developed for our forces, while at the same time supporting the campaign to induce our scientists to sabotage the development of advanced defense production. She referred to people "whose minds think in terms of statistics, not human lives," who "are proud of this new perfection"—that she described as "rough-edged plastic pellets." She closed this broadcast with the declaration, "I believe that in this age of remote controlled push button war, we must all try very, very hard to remain human beings."

Who could argue with this? Except that it related to an extraneous state of affairs, apart from the warfare being fought at that moment, in which all the aggressions actually were those of the communists, who were implying, through her, in effect, that any defense against the rapist, the mugger, and the invader constituted the assault, not the acts themselves. This is the "psywar" contest in which Fonda represented world-wide communist corrosion of will and character in those being set up as their next target.

Not a hint was given, of course, that every conceivable form of booby trap is used routinely by the Reds with exquisite ingenuity as part of a terror campaign that dismembers and kills those who stumble on them. Their victims are just as often, or more frequently, the truly "innocent civilians" of South Vietnam, not the guerrillas whom Hanoi employs in the guise of workers and peasants, or the children, women and old people forced to act as terrorists. Nor was there the slightest reference to the use of whatever advanced weaponry was received from the Soviet Union. The focus was entirely on the weaponry required for defense. This was all bad.

Her broadcast, referring to the enemy side, portrayed all of it as people who do not differ "from our own children, our mothers, or grandmothers." The fatigue and understandably frustrated mind of a pilot, fresh from a mission over North Vietnam, cannot be considered wholly invulnerable to such plaintive appeals from such an American source, particularly in view of the anti-anticommunist policy that permeated most of what he read that issued from his own country, and seemed to be official government policy, as if Fonda only were echoing American official and intellectual views.

The communists were being given all the advantage by default. Jane Fonda being allowed to assault every phase of our society specifically, by name, whereas even the words communism, and treason, were practically taboo on our side. We

were fighting a propaganda war with not merely one hand tied behind our backs, but with a gag in our mouths. Communism is no enemy, eminent government authorities seemed to be saying. The American soldier can be excused if he has difficulty detecting the difference, particularly when no legal action is taken against obvious collaboration with the enemy.

Here, in front of me, is another Fonda broadcast from Hanoi, of July 30, about 1500 words long, announced as "An address to American GIs in South Vietnam". Her appeal to the American flyers had been directed toward breaking their will to hit the targets assigned to them. This appeal to GIs encouraged them to disobey orders, turn their weapons against their officers, desert, and generally take the side of the enemy. Her broadcasts to the GIs were more brashly worded than to the usually better educated pilots. She preached subversion with subtlety, using as a vehicle the descriptions of what she said other supposedly rebellious American soldiers were doing, dramatically leaving the impression that such insurrection is right and good, and that those hearing her should go and do likewise.

Even those who listened to her out of curiosity, to hear a glamourized film star in a real life role, sure that they could not be influenced, could be softened up by it to accept the same line when they came across it elsewhere, reinforced and orchestrated in our customary channels of communications. We would be foolish to discount this impact simply because we cannot pin down what will bring it to the surface later on, when and where.

One of the most astonishing phenomenon in the whole range of propaganda pressures is in what is called assessment—the assessing of results. Accuracy is practically impossible in this field, because what may seem to be without effect can later on be decisive in changing an entire attitude. Fonda's broadcasts were devised to also have this delayed impact when the Americans returned home.

Jane Fonda's July 30 broadcast to the GIs was in unabashed support of the campaign to destroy the American forces, particularly the U.S. Army, from within. This has been an enemy tactical objective that was built up out of the antidraft movement.

The broadcasts in which she was introduced as talking to Saigon students, was adapted to that age level, which provides the fighting forces of the country, almost wholly so now that the American and other foreign troops are leaving. The patent objective too, was to encourage treason in faculties and student bodies, a prime target of world-wide communism. The age of the American troops made them particularly vulnerable to this approach.

At the start of the broadcast, she said, "I loudly condemn the crimes that have been committed by the U.S. Government in the name of the American people against your country," thus supporting the Red splitting tactic that differentiates between the American people and their government. She

subtly proceeded along this line, as if what she termed "the repression by the U.S. Government and the Saigon clique" were recognized facts accepted by the peoples of both countries.

Her broadcast gave a shocking insight into the conduct of the American-educated Vietnamese student-hijacker. She told of talking to the Vietnamese students in the United States—one can imagine what she told them!—and of their longing to return "to a peaceful Vietnam."

"For the time being," she said, "they feel that their duty is to remain in the United States and do their political work among the American people."

She subtly put over a particularly cunning piece of enemy propaganda pressure by this approach. She casts suspicion on every patriotic South Vietnamese student in the United States by classifying them all as pro-Red conspirators.

One of the major propaganda gimmicks of the Reds, wherever their people are living a particularly onerous life in a controlled environment that excludes information from the outside, is to portray conditions in the non-communist world as even worse. The truth about the incomparably better life led by people in the United States than elsewhere can hardly be suppressed, so particular attention is paid to whatever isolated case can be drawn on to dispute this fact.

When Jane Fonda can come out and say over the air, as she did that July 26, from Hanoi, describing the United States as a country where "people have no reason for living", it is a particular propaganda gain for the Reds. Those inside communist quarters who are thinking of resistance can be discouraged from undertaking it, and in frustration, may even turn their hatred against America, which they then see as letting them down. This is a long-time Red propaganda operation to which Jane Fonda contributed her prestige and dramatic skill.

She engaged in a transfer tactic, too, telling the South Vietnamese that their troubles were due to the United States. She described it as "the American cancer in the Southern part of your country."

Indeed, one would have to go with a hair comb through the rantings of Lord Haw Haw to find much, if anything, equivalent in spleen against the Allies in World War II equivalent to Jane Fonda's tirades against the United States.

Obviously addressing those who are engaged in guerrilla warfare and in other forms of terrorism in South Vietnam, whose booby traps and ambushes have dismembered and disfigured so many American and Vietnamese, she told them: "We thank you for your brave and courageous and heroic fight."

She admitted in this broadcast, "recently in the United States we've been doing a lot of political propaganda work." She ended up by singing in Vietnamese a song that she said was written "by the students in the prisons who have been imprisoned by the Thieu regime in the South."

Her report on American prisoners of war followed the long established routine by which a few were trotted out for abject interviews, obviously cowed and rehearsed. The Hanoi regime, in support of this P.O.W. operation, extracts weeks of favorable nation-wide publicity in the United States by releasing, at long intervals, three American prisoners—always three.

Accordingly, a statement broadcast of a "press conference" by Fonda on July 20 records her as saying: "There were 7 prisoners that I talked to, some of them who had never spoken to Americans before, and they all re-expressed regret about what they had done, and they said they had come to recognize that the war is a terrible crime that must be ended immediately."

This must have been a cruel ordeal for the P.O.W.s. The questioning by an American actress who was taking the enemy's position on all things assaulted whatever stamina they had been able to maintain, and to have seemed to confirm the communist propaganda that their country was letting them down, and of inevitable Red victory.

The same program included her acceptance of the whole Red line on supposed American bombing of the dikes in North Vietnam. "The point is that its results are genocidal," she declared.

Her July 30 broadcast that encouraged mutiny in the American forces generalized with the remark: "In America we do not condone the killing of American officers; we do not condone the killing of anyone." Then she promptly followed this equivocal observation with a "but". "But," she said, using double talk, "We do support the soldiers who are beginning to think for themselves. I've spent two years working with the antiwar soldiers in the United States, in the Philippines, in Okinawa and in Japan."

These remarks followed her statement that new American recruits in South Vietnam "were separated from the guys who had been there for a while behind barbed wire so they wouldn't find out what had been going on. The men had to turn in their arms at night. Why? Because there were so many U.S. officers being killed. Fraggging—the word fragging entered the English language. What it meant was that the soldiers would prefer to roll a fragmentation grenade under the tent flap of their officer, if he was a gung-ho officer who was going to send them out on a suicide mission, rather than go out and shoot people that they did not feel were their enemy."

One hardly needs knowledge of communist double talk to see through these sentences, particularly when they emanated from the enemy capital at Hanoi, uttered by an American known to be favoring the Hanoi cause.

The deteriorating effect on morale and stamina of the Fonda broadcasts should not be underestimated, nor the delayed impact of her tactically chosen subject matter, and its relationship to the major issues with which the Marxist network was concerned.

She went farther, in her assaults on her own country in this Vietnam warfare than Tokyo Rose or even Lord Haw Haw in World War II. The prestige value to the enemy of her as a movie star gave her activities an added impact that none of her predecessors in wartime broadcasting from enemy capitals possessed.

The fact that she can engage in such corrosive activity with impunity, and be accorded a respectability by the press that is without precedent in the annals of warfare, and be able to travel freely to the enemy capital and back is worth Army divisions to the foe. We can be sure they know this, and are determined to take full advantage of it.

One would be hard put to imagine anything more unfair to our fighting men than this inexplicable tolerance.

FRANCIS M. WATSON, Jr.

Francis M. Watson, Jr., is a graduate of the University of Georgia where he received both a BS in Education and a Masters degree in journalism. In the early 1960's he was Deputy Manager of an information analysis center for the American Institutes for Research where he conducted research in insurgency and propaganda techniques and revolutionary tactics. He became a specialist in media analysis whereby public opinion trends may be determined from newspapers and other information sources. In 1970 he became chief analyst for a Washington, D.C., firm named National Media Analysis where he studied the so-called "underground" press and edited published reports detailing the propaganda impact of such newspapers with respect to revolutionary and protest movements in the United States. He currently manages his own firm, Media Research, located in Dunn Loring, Virginia.

FRANCIS M. WATSON, Jr.
Media Research

September 11, 1972

Dr. Joseph E. Thach
Research Analyst
Committee on Internal Security
House of Representatives
309 Cannon Building
Washington, D.C. 20515

Dear Doctor Thach:

The enclosed selection of broadcasts, attributed to actress Jane Fonda, were reviewed as you requested. Frankly, although I have pored over literally thousands of pages of underground press material in the past few years, I have found little that I felt qualified more precisely as purely *psychological warfare* than these. I use this term in the sense of Dr. Paul M. A. Linebarger's classic book on the subject and of the FM 33 series of field manuals produced by the U.S. Army since the 1940's.

I have to discount Miss Fonda's words as constituting an anti-war *protest*, not only because they were allegedly directed toward U.S. military forces in the field—a group hardly in a position to act on anyone's protest without disobeying the orders they are operating under—but because she says as much in her text. In other words, she is not addressing her

remarks toward influencing the voting behavior of fellow citizens, or toward legislators who are passing on military appropriations etc., or the President, Secretary of Defense, or even commanders in the field, she is, in her own words, addressing herself to men at the operational level of military units and suggesting to them that they not follow their orders.

As I noted in the beginning, her techniques, phraseology, and themes are more comparable to *combat propaganda operations*, designed to encourage misbehavior on the part of troops, than anything else I can think of. For example, her words seem to fit the following passage rather well:

. . . Another major direction of the propaganda effort is to emphasize to the enemy soldier the dangers of combat. Such an appeal, combined with a questioning of the worth of his country's war aims, is designed to encourage the enemy soldier to be particularly cautious and to malingering and avoid danger at every opportunity, thus reducing the combat effectiveness of his unit. [p. 12, U.S. Army FM 33-5, January 1962]

Perhaps more specifically to the Vietnam situation, I see the texts of these broadcasts as falling quite handily into the statement of a primary psychological goal of insurgent forces as stated in the 1966 edition of this same manual:

. . . to convince the world and the local population that the motives of nations assisting the threatened government are false. Through national and international media, the insurgent will attempt to malign the motives of all assistance to the local government. Economic exploitation, neo-colonialism, genocide, and capitalism seeking raw materials and markets are some of the numerous themes used to elicit sympathy and support. [p. 35, U.S. Army FM 33-5, October 1966]

Certain passages in Miss Fonda's material call to mind descriptions of propaganda aimed at the French in the Algerian experience:

. . . Frenchman were told that the war waged by France was unjust, that the FLN was justified in fighting for independence, that the very principles invoked by the FLN were learned from the French Revolution, etc. . . [p. 279 *Undergrounds in Insurgent, Revolutionary, and Resistance Warfare*, Special Operations Research Office, The American University, November, 1963]

Similar material, of course, can be found in the literature on most revolutionary operations in the past fifty or sixty years. The Huks in the Philippines, for example, used some of the same themes.

Getting directly to the resemblance of Miss Fonda's material and traditionally accepted psychological warfare techniques and the prospects of this material affecting troop morale, let me call attention briefly to the origin, history, and theory of this branch of military tactics. As pointed out in

U.S. Army manuals, these techniques are as old as recorded history, but came into habitual use in the U.S. services in World War I. There these efforts focused on surrender appeals to hungry enemy soldiers in trenches. In World War II the techniques were further perfected and broadened, but still, as far as combat troops were concerned, the propaganda appealed heavily to hungry or beleaguered troops or forces whose chances of victory and eventual return to their homeland were rather easily shown to be poor. And, more often than not, that has been the case, the propagandist could see a host of personal deprivations among the enemy troops he could seize upon. Even the Tokyo Rose type of effort, at the strategic level, dwelled on the length of time troops had been away from home and played upon their being out of communication with their families and the home scene.

Part of the intelligence operation connected with the propaganda effort has always been to find out what the target troops did and did not have. It would always have been ridiculous to beam "hunger appeals" to well-fed troops or "we have got you surrounded" messages to carrier-based pilots. But, the application of the techniques has generally been to make the propaganda appeal on the lowest rung of the "physiological-need" ladder—tired, hungry, cold, beaten men's minds are at the lower rungs and it is futile to appeal to them with more abstract messages.

Perhaps many of us have become used to judging propaganda in these terms—and perhaps we have become used to judging troop morale primarily on these bases. But, of course, the propaganda theory has always been that if the baser needs were satisfied the propagandist had to raise his sights. When the next level of needs were satisfied he had to raise them again. When personal welfare and safety were not really in much jeopardy he had to get almost completely out of those areas or his propaganda would simply be laughed at.

Look at Vietnam. The U.S. troops have had essentially everything they could possibly want for, in terms of creature comforts. And, compared to other military experience in world history, their tours have been short, their communications with home good, and so on. I don't mean to suggest that Vietnam duty is a picnic—having been all through the Vietnam command, I know better. It would be foolish, however, for any propagandist to try to get at those troops with the old ploys. About the only themes left are precisely those Miss Fonda harps on. Nothing in the books suggests the propaganda will therefore be any less effective—a well-fed man can simply be reached on matters that a hungry man would not even listen to.

Thus, in the broadcasts it is easy to spot attacks on what is the basic element of any healthy, well-attended fighting man's spirit—the justice of his cause. Obviously, a man who is hungry enough, will kill just to eat—a frightened man will kill to preserve his own life, etc.—but a man who is

not so deprived or so threatened must believe in his cause in order to take another human life. Keep pounding at him with arguments otherwise—supported by evidence that the obvious enemy is not the only one who says this—and you begin to get to him.

Then, inject the “war crimes” fear—the “even you may have to answer for this behavior later!!” Use as a background the “women and children” plea, support it with the “I am seeing it with my own eyes, and I am an American, too” credibility potential, and lace it with allusions to the beauty of the women and the pastoral nature of the countryside. Come in with the “inhumanity of buttons and levers” against an enemy you don’t have to face, and the tearing of flesh with plastic and metal. It is all in Miss Fonda’s text and it is just as it should be, from the standpoint of good propaganda operations.

Finally, there are some distinct advantages to Jane Fonda, American movie star, and frequent personality around Army posts, as a speaker. She is immediately known. She is glamorous. She has all the trappings of self-sacrifice, and she has rapport. She knows youth and she knows the Army. In this respect she is better than any Tokyo Rose history has ever known—she is a walking encyclopedia of *current, cultural* and technical intelligence on the U.S. military and the young people who occupy so many of its ranks. She is even an expert on the anti-military movement. She mentions that and thus provides a readily available philosophy and group-association for her listeners.

Just in case all of these things will miss some people, she puts in the personal risk, the prisoner-of-war threat, and the people back home crying over the men overseas, and tops that off with hints that there won’t be a job or a place in life for the returning veteran. It is quite complete.

Again, these broadcasts are, in my opinion, *good, military* propaganda. Whether or not they affect troop morale is a matter of assessment, but there is nothing wrong with the design.

Sincerely,
FRANCIS M. WATSON, Jr.

BRIG. GEN. S. L. A. MARSHALL, USA (RET.)

The author of more than 25 books, Brig. Gen. S. L. A. Marshall, USA (Ret.), has been a military writer both in and out of uniform since 1922 after service in World War I during which he rose from infantry private to lieutenant.

Marshall’s writing career began on the El Paso, Tex., Herald in 1922 and in 1927 he joined the Detroit News as military critic. Subsequently he became a news foreign correspondent in Latin America and in 1936 went to Spain to cover the civil war in that country.

During World War II, Marshall first served as Chief of Orientation for the Army and later was named by Chief of Staff George C. Marshall as one of three officers to establish the Army’s Historical Division.

Marshall left active service after World War II but returned to uniform in 1948 to assist in formation of the North Atlantic Alliance. He served in Korea

during the war there from 1950 to 1953 and was later an Army observer of conflicts in Sinai, Lebanon, the Congo and Vietnam.

Marshall retired in 1960 as Deputy Chief of Information of the Army but returned to Vietnam in 1967 as a columnist, historian and training adviser to Army historians.

He is presently the author of a newspaper column on military affairs that is syndicated by the Los Angeles Times and Washington Post.

SLAM Birmingham, Michigan
28 August 72

To Robert M. Horner,
Chief Investigator,
HR Comm on Internal Security,
Washington, DC

Dear Mr. Horner :

You wrote me asking my judgment as to the likely effect of the Jane Fonda broadcasts out of North Vietnam on U S service people stationed in that area.

First as to my credentials, the following points should be pertinent and sufficient, though there are others:

1. During WW II, I was special adviser to high command Central Pacific on psywar problems, in particular, how to increase our take of POWs, and in this I succeeded. I had the same advisory role in Korea, 1950-51.

2. In between wars I was called as an expert witness on this subject by the directors of Project Vista.

3. From 1955-58 I was a member of Special Ops Panel, D of D, responsible for scientific guidance on psywar ops.

There is no question about the intent of the Fonda broadcasts. The evidence *prima facie* is that the purpose is to demoralize and discourage, stir dissent and stimulate desertion. But then, that is not the question you posed.

Would it have any one or all of these effects provided the words of the broadcaster were heard by a vulnerable individual? Here I speak of the Fonda production as a whole. There is no reason to doubt that it would. To be effective, what is said has to be credible. When the propagandist speaks in the idiom of the audience to whom the words are directed, and in reporting as an eye-witness, cites facts, objects and circumstance with which the listener is likely to be familiar, that meets all of the requirements that insure maximum belief.

I would speculate that Miss Fonda gets help in the preparation of her broadcasts. They are expertly done and are models of their kind.

All of this having been said, as to the main question of whether she did material damage to the well-being of forces in Asia, or for that matter, in the ZI, I am unable to answer.

I would stand on the general proposition that in the occurring circumstances, when any fellow citizen is permitted with impunity to go to such extremes, men and women in the serving forces feel resentful, and in the overwhelming majority, to the degree that they believe they have been let down by government because it does not act, their own feelings of loyalty become taxed. The hurt here is long-term and indirect.

That still does not answer the question. I have no idea how many serving people heard Miss Fonda, or of those who heard, what percentage had previously discounted her as a liar, a trouble-making subversive or a half-cracked female. One would need to know such things to make an intelligent estimate.

I do know we have an extremely sensitive situation in Indochina, one probably without precedent in our history. On returning there in July, 1970 to get a measure of troop morale and discipline the Chief of Staff, USA, felt so much alarm at what he found that on getting back to Washington he visited the President to warn him that "anything might happen." That would include large-scale mutiny. Where the balance is just that delicate, any act of aid and comfort to the enemy of the United States could become the fatal straw.

Faithfully yours,

SLA MARSHALL

HEARINGS REGARDING H.R. 16742: RESTRAINTS ON TRAVEL TO HOSTILE AREAS

MONDAY, SEPTEMBER 25, 1972

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

PUBLIC HEARINGS

The Committee on Internal Security met, pursuant to call, at 11 a.m., in room 311, Cannon House Office Building, Washington, D.C., Hon. Richard H. Ichord, chairman, presiding.

Committee members present: Richard H. Ichord of Missouri, Richardson Preyer of North Carolina, Mendel J. Davis of South Carolina, and Roger H. Zion of Indiana.

Staff members present: Donald G. Sanders, chief counsel; Alfred M. Nittle, legislative counsel; Daniel R. Ferry, assistant counsel; and DeWitt White, minority legal counsel.

The CHAIRMAN. The meeting will come to order. The Chair has called this public hearing today to receive testimony concerning H.R. 16742, a bill introduced on September 20 for myself and five of my colleagues on this committee, Mr. Ashbrook, Mr. Davis, Mr. Thompson, Mr. Schmitz, and Mr. Zion. The bill the committee hears today is very concise and quite simple. It would authorize the President to determine that travel to any country whose military forces are engaged in armed conflict with military forces of the U.S. shall be restricted, and thereby become unlawful.

Before proceeding to hear the testimony of the witnesses, I want to insure that the background is clearly understood and that the issues are properly framed. We are faced with the problem of imposing some limitation on one of the many freedoms our citizens cherish and enjoy, that is, freedom of travel. We shall see that while there are restrictions on the use of U.S. passports for travel to certain countries, including North Vietnam, there are no effective criminal penalties for traveling to North Vietnam if a U.S. passport is not utilized. So this measure is not a new effort to restrict travel, it is a measure to make existing restrictions effective. The question then is whether the right to travel to North Vietnam (or possibly to any other country with which we might encounter similar circumstances) has been so abused and has so adversely affected our national interests as to require some reasonable measure of limitation. Has there been such harm or such clear and present danger of harm resulting from the journeys of citizens to North Vietnam that the Congress would be justified in plac-

ing some effective restriction on this aspect of the freedom of travel? And are there any measures which would prevent the harm, or the danger of harm, and thus accomplish the same objectives, but with some lesser degree of impingement upon the freedom of travel? Personally, I can see no reason why any citizen should have the right to travel to a country with which the United States is carrying on armed conflict without prior authorization.

The matter of private citizens attempting unauthorized negotiations and transactions with a foreign power contrary to the national interest has caused serious problems since virtually the founding of the Nation. Before the end of the 18th century, Congress thought it necessary to pass the Logan Act to forbid such transactions. Although many accusations have been made of violations of the Logan Act, the record is barren of any completed prosecution. Nevertheless, some types of transactional behavior in foreign countries have been prosecuted in the past under other statutes such as treason or sedition. "Tokyo Rose" and "Axis Sally," for example, were convicted of treason for their broadcasts to American troops on behalf of Japan and Germany during World War II.

Since the mid-1960's, soon after the beginning of U.S. military involvement in Vietnam, we have been treated to the spectacle of a stream of unauthorized U.S. citizens going to North Vietnam for a variety of purposes, such as POW negotiations, POW interviews, bombing inspections, and broadcasts to American troops. Most of them, consciously and willingly, have been used by the North Vietnamese in a massive propaganda campaign. They have performed a great disservice to their own country.

The recent broadcasts of Jane Fonda over Radio Hanoi are only the latest of a continuing series of activities of U.S. citizens in North Vietnam which the Department of Justice seems unable to control, because of the existing law. Jane Fonda is not the first to travel to Hanoi, not the first to make radio broadcasts in Hanoi, not the first to make radio broadcasts to American troops, and the problem is not new with Jane Fonda. Her travel, her broadcasts to encourage disaffection with U.S. military forces, and the widespread publicity given to her activities have only underscored the problem.

This committee, as well as other committees of Congress, has previously considered the adversities resulting from the travel of others to various Iron Curtain countries. The hearing records overflow with evidence concerning the injurious effects of travel to Cuba, a nation with which we are not engaged in armed conflict, but is in the category of a hostile power.

Legislation even more comprehensive than H.R. 16742 has been pending before the Congress for several years. H.R. 14428, introduced in 1967 by Chairman Celler and referred to the Judiciary Committee, would have authorized the Secretary of State to restrict travel to certain countries for any one of four reasons, one of which was the armed conflict condition of H.R. 16742. Identical bills, strongly supported by the Justice and State Departments, were reintroduced in 1969. We have with us today, Congressman Bennett, who has long been an advocate to make such travel restricted and unlawful. He, I think, was the first in the Congress to recommend the passage of such legislation.

In 1965 the Supreme Court in *Zemel v. Rusk* (381 U.S. 1)¹ sustained the power of the Secretary of State, acting under considerations of foreign policy, to refuse to validate a passport for travel to Cuba. But the seeming authority of the executive branch to prohibit travel to certain designated areas was washed away by the decision in *U.S. v. Laub*² in 1967. In that decision, the Supreme Court held that Laub could not be convicted for travel to Cuba in violation of restrictions since he had an otherwise valid passport and because the restrictions on travel to Cuba were not penal because of the absence of statutory authority.

Thus it appears that citizens can secure passports on the pretense of traveling to a nation which is not on the restricted list. Once there, the citizen can then secure a visa from North Vietnam, not using the U.S. passport, and travel to North Vietnam without fear of prosecution.

In my remarks in the *Congressional Record* of August 15, 1972, and September 20, 1972, I covered in greater detail the development of the Fonda case, the actions of the committee, and the admittedly difficult evidentiary problems attendant with prosecution. Rather than go over this again, I will insert those remarks in the hearing record,³ if there is no objection.

On September 19 the committee heard in executive session the testimony of representatives of the Department of Justice and the Passport Office. That testimony will soon be made public and be made a part of this hearing. A number of studies have been prepared by the staff and by consultants which have entered into our considerations. Without objection, I am entering these in the record today. They include, in addition to the psychological warfare analyses introduced on September 19,⁴ the July travel itinerary of Jane Fonda, the list of Radio Hanoi broadcasts by Fonda, the texts of Fonda's broadcasts to U.S. servicemen, Dr. Joseph Thach's analysis of her broadcasts, a staff compilation of relevant statements made by Fonda prior to her travel to Hanoi, a statement of staff efforts to interview Fonda, and a compilation of broadcasts previously made by other U.S. citizens.⁵

Following the testimony of the witnesses this morning, it is my intention to hold an executive meeting of the committee to deliberate upon H.R. 16742. We were once hopeful that at least one aspect of travel to North Vietnam, propaganda broadcasts, could be controlled by use of the treason or sedition statutes. But in the absence of optimism on the part of the Justice Department, we must seek other statutory remedies. Limited prosecutions for sedition or treason would prevent the harm while permitting travel by others for nonharmful purposes. But if the Department of Justice finds the evidentiary problems insurmountable, then we can simplify the evidentiary requirements by broadening the proscription. I am hopeful the committee will take some action to stem the venomous flow of propaganda emanating from the mouths and actions of U.S. citizens on enemy soil.

(A copy of H.R. 16742 follows:)

¹ See appendix, pp. 7695-7734.

² See appendix, pp. 7735-7750.

³ See appendix, pp. 7633-7638.

⁴ See pp. 7581-7602.

⁵ See appendix, pp. 7639-7694.

92D CONGRESS
2D SESSION

H. R. 16742

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 1972

Mr. ICHORD (for himself, Mr. ASHEROOK, Mr. DAVIS of South Carolina, Mr. THOMPSON of Georgia, Mr. SCHMITZ, and Mr. ZION) introduced the following bill; which was referred to the Committee on Internal Security

A BILL

To amend section 4 of the Internal Security Act of 1950.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 4 of the Internal Security Act of 1950
4 (50 U.S.C. 783) is amended by adding immediately follow-
5 ing subsection (c) of such section the following new sub-
6 section:

7 “(d) The President may restrict travel by citizens and
8 nationals of the United States to, in, or through any country
9 or area whose military forces are engaged in armed conflict
10 with the military forces of the United States. Such restriction
11 shall be announced by public notice which shall be published

1 in the Federal Register. Travel to such restricted country or
2 area by any person may be authorized by the President when
3 he deems such travel to be in the national interest. It shall
4 be unlawful for any citizen or national of the United States
5 willfully and without such authorization to travel to, in, or
6 through any country or area to which travel is restricted
7 pursuant to this subsection.”

8 (b) Section 4 of such Act is further amended by redesignig-
9 nating existing subsections (c) through (f), as (d) through
10 (g).

The CHAIRMAN. If no other member of the committee wishes to add anything, we do have with us—Mr. Zion.

Mr. ZION. Thank you, Mr. Chairman.

I would like to read an article which appeared this morning, September 25, 1972, in *The Evansville Courier*.

Look at dissenters urged.

To the Editor of The Courier :

We have always had the dissenters, the protesters and the disloyal in America and have been able to live with them.

But now it has come to the point where these groups take it on themselves to make deals with our enemies and other acts of treason. It is time to take a good look at the situation.

A Constitution and a Bill of Rights that have fully protected the dissenter, the protester and the nonconformist for decades are now being used by intellectual activists to forbid the overwhelming majority of people the right to exercise vows, pledges and oaths of loyalty.

Loyalty is a good thing. It is of tremendous value between two or more people. It has a great place in the home, family, church and the community. There is absolutely nothing wrong with a citizen proudly loving the nation that has allowed him a superior life.

If there are those among us who have no love, no affection, no loyalty and no concern for the welfare of this nation and its people, our Constitution and laws permit them to live here without penalty.

But such freedom does not extend to them the further right to prevent those who love their fellow man and country from pledging their fidelity, faith and loyalty to the whole of the land.

What tragic lives must these people lead who have become loyal to nothing but their own weird ideas of what this world should be like.

Delbert Hart, Pres.

Spencer County Farm Bureau
Rockport, Ind.

I thank you very much for these hearings and I hope, and share with you the desire, that legislation such as 16742 will prevent the minority of those with weird ideas from exercising their rights to the detriment of the millions of loyal Americans who like it here.

The CHAIRMAN. Thank you very much, Mr. Zion.

It is a pleasure to welcome to the committee our distinguished colleague from Florida, and a ranking member of the House Armed Services Committee, Congressman Charles E. Bennett.

TESTIMONY OF HON. CHARLES E. BENNETT, U.S. REPRESENTATIVE FROM FLORIDA

Mr. BENNETT. Mr. Chairman and Members of the Committee on Internal Security:

I have great pleasure in appearing before you today to voice my strong support of the bill under consideration, namely, H.R. 16742. This bill is intended to fill a broad gap in the Nation's protective armor by providing penal sanctions in support of the President's existing authority to impose travel restrictions to countries with which we are engaged in armed conflict. While the President under existing law possesses authority to withhold passports for travel to restricted areas pursuant to the Passport Act of 1926, and has been authorized under certain circumstances to prohibit a departure from the United States without a passport pursuant to the provisions of the Immigration and Nationality Act of 1952, he is unable to apply penal sanctions for unauthorized travel to, in, or through restricted areas. This failure has

seriously affected the President's capacity to protect our Nation's security interests.

In upholding the President's authority to impose restraints on travel to Cuba by withholding passports for such travel, the United States Supreme Court in *United States v. Laub*, 385 U.S. 475 at 486 (1967), had occasion to advert to the existing gap in our laws, and noted the President's efforts to enact legislation of this type. It said:

The Government, as well as others, has repeatedly called to the attention of the Congress the need for consideration of legislation specifically making it a criminal offense for any citizen to travel to a country as to which an area restriction is in effect, but no such legislation was enacted.

The bill before us would fill this urgent requirement with respect to a situation most deeply affecting the conduct of our foreign relations, and for the defense of the Nation and the prevention of full-scale international war.

In my appearance before your committee in September of 1969, you will recall my testimony in connection with a bill I had introduced which had a related purpose of prohibiting and penalizing certain intentional misconduct obstructing the military forces of the United States. This bill, H.R. 959, subsequently reported by the committee, dealt with this general subject. I then likewise proposed an amendment which was intended to accomplish a purpose similar to that addressed by the present bill before you. I noted then that a great deal of support had been rendered to communist countries engaged in armed conflict with the United States by a number of United States citizens who have actually traveled to such enemy territory and engaged in friendly communication with a government actually at war with us.

Such activities impair the execution of our national policies and endanger the lives of our young men and women in the military services. It must be evident that neither the patience nor the tolerance of the vast number of our patriotic citizens should be tested by any further postponement in the enactment of necessary legislation designed to cope with activities which are an obvious affront to their patriotic sensibilities.

The power of Congress to enact the proposed legislation is no longer open to question. That the President of the United States and the Congress, acting together, may validly impose such travel restraints in the regulation of the Nation's foreign affairs is the effect of the most recent decisions of the judicial branch on the subject. The enactment of this legislation will demonstrate our will to persevere in maintaining vital national policies, while at the same time allaying those misapprehensions now shared by many of our citizens as to the Government's capacity to fulfill its mission. Let us enact this legislation promptly. I congratulate the committee for bringing it up and hope it can be enacted in the very near future.

The CHAIRMAN. Thank you very much, Mr. Bennett. The legislation you propose was also restricted in its operation, was it not? I believe you used the terminology, "hostile country," rather than "armed conflict."

Mr. BENNETT. Yes. I did.

The CHAIRMAN. I think this is one of the points that should be made in connection with this legislation—very restrictive in its application.

I know the State Department, for one, has recommended a broadening to prohibit travel where there is armed conflict perhaps in which the U.S. is not involved. I see why there are valid considerations because it does cause the U.S. difficulty in extending protection to the U.S. citizen in a foreign conflict to which it is not a party. You would recommend a broadening of the legislation in that respect?

Mr. BENNETT. I think the statute you have before you is a good statute. It allows the President to allow anybody to go to any country if he feels it is in the national interest to do so. He could have regulations under this to restrict how far it would go. I think it gives him the necessary tools to protect what I think most people consider to be treason from taking place, but it doesn't require us to go through the procedures and penalties involved with the more heinous crime of treason.

The CHAIRMAN. Thank you. Are there any questions?

Mr. ZION. I would just like to say we are pleased to have the gentleman with us. Thank you very much.

Mr. PREYER. I commend you for all you have done in the past for us.

The CHAIRMAN. Thank you very much.

The next witness is our distinguished colleague from the State of Mississippi, Mr. Montgomery.

TESTIMONY OF HON. G. V. (SONNY) MONTGOMERY, U.S. REPRESENTATIVE FROM MISSISSIPPI

Mr. MONTGOMERY. Mr. Chairman, Members of the Committee, I appreciate this opportunity to appear before you this morning to lend my support and to urge my colleagues to support H.R. 16742, the limited travel ban bill introduced by you, Mr. Chairman, and several members of the committee.

There is little doubt that the Vietnam war has created great controversy in our country. There is little that has not been said about our participation and involvement in it, but, Mr. Chairman, the recent activities of Jane Fonda, broadcasting specifically to U.S. servicemen who are serving the United States in that war is the most despicable act that has yet been committed by anyone who advocates our withdrawal from this frustrating and expensive war. Mr. Chairman, as you know, I have a deep personal interest in the plight of our POWs. I have been to Southeast Asia on seven separate occasions—I realize this doesn't make me an expert—in attempts to gain information regarding the condition of our POWs. Included in these trips have been three visits to Vientiane, Laos, but every trip I have kept the Department of State and the Department of Defense fully apprised in my trip and intentions. I have had the approval of each of my trips. However, the situation of American citizens traveling with apparent impunity to North Vietnam and broadcasting propaganda messages from Hanoi to Americans fighting that foreign government is incomprehensible. I believe Mr. Thompson is to be commended for raising this issue that reveals a serious deficiency in our present statutes.

I am unable to see how any purpose can be served or any good can result from permitting American citizens to privately take it upon themselves to travel to the enemy's capital to condemn our involvement in this or any other war. Whatever the motives may be of those

citizens in traveling to North Vietnam, there can be no doubt of the effect on our soldiers, sailors, and airmen's morale, and will, to accomplish their assigned missions when they listen to the messages of the enemy being broadcast by a fellow citizen from the enemy stronghold. That effect can only be compounded when that citizen has the identity and fame that Jane Fonda possesses. If the situation is as it appears to be, that present statutes designed to prevent this type of activity on behalf of an enemy are unenforceable, then it is clear that we in Congress must take the responsibility to equip the President with the tools he needs to carry out those measures necessary to our national interest. It certainly is not in the interest of this country to permit and allow any citizen to traffic with an enemy with which we are engaged in open hostilities. The enactment of H.R. 16742 will prevent, in my opinion, the unilateral involvement of citizens with an enemy, whoever it happens to be. I believe the travel restrictions imposed under authority of this measure are reasonable and necessary, Mr. Chairman. I hope that there will not be any future occasion in which it is necessary to impose this travel ban, but if that time comes, with this bill as law, the President will have the resources to conduct foreign policy without having to compete with conflicting efforts of private citizens or to contend with efforts to subvert, from an enemy's capital, the loyal servicemen and women attempting to accomplish the tasks assigned to them.

Mr. Chairman, I believe we are fortunate to have your leadership in pushing forward with this measure. I support this bill and urge my colleagues to do the same.

Thank you.

The CHAIRMAN. Thank you, Congressman Montgomery, for a very clear and forceful statement. I want to take this opportunity to publicly commend the gentleman from Mississippi for the outstanding service that he has rendered the American troops serving in Vietnam. Regardless of how one feels about the war in Vietnam, our troops are there and I think that everyone in the U.S. and particularly the American troops serving in Vietnam owe the gentleman from Mississippi a debt of gratitude for the services that he has provided.

Are there any questions?

Mr. ZION. I wish that the gentleman from Mississippi, who has done such an outstanding job, got one-tenth of the publicity for his services as those who want to subvert the activities of our loyal fighting men.

Mr. PREYER. I think that Mr. Montgomery has probably been to Vietnam more often than anybody in Congress. Therefore his testimony is entitled to considerable weight.

The chairman asked the question, in his opening statement—said, rather—"The question then is whether the right to travel to North Vietnam * * * has been so abused and has so adversely affected our national interests as to require some reasonable measure of limitation."

So, it is your judgment, based on your trips, that it has been abused, has adversely affected our national interests. Do you know, from your trips there, that these messages are actually getting through to our troops, say, Jane Fonda's?

Mr. MONTGOMERY. Gentlemen, the North Vietnamese have a good communication system, and it does get back to our troops on the car-

riers in Thailand, in South Vietnam, and they are well abreast of these persons going into North Vietnam. And I think this is a reasonable bill. It would give the President discretion, if he did want to grant permission to someone such as a Member of Congress, someone that would have some complete interest in the overall situation, to go into North Vietnam. I think it is a reasonable bill, as I said in my statement. No question about it including Ramsey Clark—I don't question his patriotism, but I question his judgment in going into North Vietnam. There is no question about it, he was brainwashed. And when you get into a country like this, they will do everything in their power to show you things that happen and they can take it out of context; they can show you areas that some of our air strikes have hit, but this is the exception and not the rule. And to get back to this legislation, it is necessary and needed, probably should have been passed 2 or 4 years ago, and I think there is no question about it that those who have gone into North Vietnam and have spoken out supporting the North Vietnamese have delayed the war and have caused other Americans to lose their lives.

Mr. PREYER. I suppose the way the word gets to the troops in the field and troops on the carriers—there would be several ways. I assume Hanoi radio is easily in reach, but probably it would come in through American news rebroadcast, if not any other way?

Mr. MONTGOMERY. That is correct; and thank goodness that we don't control any news that goes into our American fighting forces on the carriers. I am sure you have been on some of our carriers. They have their own television station, radio station, own news staff, and the news is not censored. And anything that comes out of Hanoi, anything that comes out of New York or California, AP, UP, is given right to the Americans on the carriers, as I say, and the American Armed Forces broadcasting system in South Vietnam is not censored. Anything that comes over the news, why it goes out.

Mr. PREYER. Thank you very much.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. Davis.

Mr. DAVIS. I want to join in thanking our very capable colleague from Mississippi, who, I believe, can really render to us expert testimony. It hasn't been brought out, but a lot of the trips Mr. Montgomery has made, he has made at the sacrifice of his own time, going at Christmas time to help boost morale while others have tried to destroy it. I think he should be complimented for these efforts and all efforts he has made.

Thank you, Mr. Montgomery.

The CHAIRMAN. Thank you, Mr. Montgomery.

Mr. MONTGOMERY. Thank you, gentlemen.

The CHAIRMAN. Our next witness, this morning, is Mr. A. William Olson, the Assistant Attorney General, Internal Security Division, representing the Department of Justice.

Mr. Olson, it is a pleasure to have you again before the committee. Do you have a prepared statement?

Mr. OLSON. Yes, I do.

The CHAIRMAN. You may proceed.

**TESTIMONY OF A. WILLIAM OLSON, ASSISTANT ATTORNEY
GENERAL, INTERNAL SECURITY DIVISION, DEPARTMENT OF
JUSTICE**

Mr. OLSON. Mr. Chairman and Members of the Committee, I am pleased to appear before the committee to present the views of the Department of Justice concerning H.R. 16742, a bill to restrict travel by citizens and nationals of the United States to any country or area whose military forces are engaged in armed conflict with the military forces of the United States.

H.R. 16742 would authorize the President to institute such restrictions through an announcement which shall be published in the *Federal Register*. Travel to such restricted country or area would then be unlawful unless the traveler had been authorized by the President to so travel after a determination that such travel was in the national interest. Substantial criminal sanctions are provided for United States citizens and nationals who violate the restriction.

Mr. Chairman, as you know, the Department has for many years supported efforts to provide appropriate and effective travel control legislation. The problem became particularly apparent in 1967 when the Supreme Court in *United States v. Laub*, 385 U.S. 475, held that travel to a restricted area with an otherwise valid passport was not punishable under section 1185(b) of title 8, United States Code. The power to prescribe area restrictions had previously been sustained in *Zemel v. Rusk*, 381 U.S. 1 (1965), which sanctioned the Secretary of State's refusal to validate a citizen's passport for travel to Cuba.

Although the Secretary may request a criminal prosecution under 18 U.S.C. 1544, for use of a passport in violation of the restrictions contained therein, it is, as a practical matter, almost impossible to obtain sufficient evidence of such violation to sustain a prosecution under that law. The only other action which the Secretary might possibly take is to deny or revoke a passport when the sole travel intended is to a restricted area (*Lynd v. Rusk*, 389 F. 2d 940, D.C. Cir. 1967).¹ The narrow scope of this action is inadequate to deter such travel by persons who are so inclined. Consequently, area restrictions today are ineffective since the Secretary has no realistic means of enforcing them.

As you know, Mr. Chairman, numerous bills have been introduced in the Congress over the years aimed at plugging this loophole in the law. H.R. 14428, in the 90th Congress, was a bill, drafted in the Department of State with the assistance of the Department of Justice, which would have accomplished this purpose. The Department reported favorably on that bill on March 5, 1968. In the last Congress, the Department reported on H.R. 383 and H.R. 14893. These bills, "to restrict travel in violation of area restrictions," were substantially identical to H.R. 14428, mentioned previously, except that the caption had been changed and the penalty increased from a misdemeanor to a felony. Mr. Kleindienst, then Deputy Attorney General, in his letter report of July 16, 1970, stated that the Department "strongly supports" this kind of legislation.

¹ See appendix, pp. 7751-7760.

H.R. 16742, the bill before this committee today, differs from H.R. 383 and H.R. 14893 in many details, but the basic substance is the same. We prefer the broader coverage of the latter bills, which would authorize restrictions to a country or area that is—

- (1) a country or area which is at war,
- (2) a country or area where insurrection or armed hostilities are in progress,
- (3) a country or area whose military forces are engaged in armed conflict with forces of the United States, or
- (4) a country or area to which travel must be restricted in the national interest because such travel would seriously impair the conduct of United States foreign policy.

Furthermore, we would prefer that the authority to designate restricted countries or areas and to grant travel exceptions be given directly to the Secretary of State, although presumably it is intended that the President's authority under H.R. 16742 could be delegated.

In summary, while we would prefer the broader coverage and other details of previously mentioned bills, we nevertheless strongly support the purpose of H.R. 16742 and the goal which it would attain.

That ends my statement, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Olson. Of course, it is the intent of the authors of the bill that the authority to promulgate orders concerning restricted travel can be delegated by the President of the United States, and I think that would logically be delegated to the Secretary of State. Now, I think that this measure is very restricted in its application. It only applies to travel to countries with which the U.S. is at armed conflict, and does have the proviso that travel can be granted if it is considered to be in the national interest. I think the primary reason why the authors of the bill have not broadened it is because it is very doubtful that this committee would have jurisdiction over passport legislation. Certainly we have jurisdiction in this area with its limited application. That measure to which you referred is now pending before the House Committee on the Judiciary, is it not?

Mr. OLSON. I believe it is.

The CHAIRMAN. Did the Judiciary Committee hold hearings on the legislation?

Mr. OLSON. I do not believe so.

The CHAIRMAN. Apparently, there is no prospect then, good prospect, for passage by the Congress out of this committee.

I did have one other question, Mr. Olson. You will note that the legislation reads, "The President may restrict travel by citizens and nationals of the United States to, in, or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States."

We have included the term, "nationals," as well as "citizens," and for the record, I would like to determine just how broad is the term "nationals." It is my understanding that there are very few nationals of the United States today in view of legislation that has been passed recently. Formerly, people who were citizens of Puerto Rico were nationals, but I think they are definitely full-fledged citizens of the United States at this time. What about Guamanians? Haven't they also been made citizens of the United States?

Mr. OLSON. Would you pardon me just a moment? I don't have that information.

The CHAIRMAN. I think most of them have been——

Mr. OLSON. Mr. Chairman, I have no definite information on Guamanians. I believe Samoans are still nationals.

The CHAIRMAN. Samoans are definitely still nationals.

Mr. OLSON. There may be some other small groups that would come within that definition.

The CHAIRMAN. Thank you very much, Mr. Olson.

Mr. Zion?

Mr. ZION. No questions.

The CHAIRMAN. Mr. Preyer?

Mr. PREYER. No questions.

The CHAIRMAN. Mr. Davis?

Mr. DAVIS. No questions.

The CHAIRMAN. I have one more question, Mr. Olson. I don't think that there would be any increased cost with the enactment of this bill, but I do need to get it in the record. Could you estimate any increased cost to carry out the bill in this fiscal year if the bill is reported and passed?

Mr. OLSON. There would be no increased cost as far as the Internal Security Division of the Justice Department in terms of manpower. I don't know of any other increased costs we might anticipate.

The CHAIRMAN. One other question. The bill provides for notice to be published in the *Federal Register*. It is my understanding that the State Department now includes such notice of restricted travel on the passport itself, does it not?

Mr. OLSON. That is correct.

The CHAIRMAN. It certainly is contemplated by the authors of this legislation that that notice is to be further given to American citizens, and I am quite sure that the State Department will carry out that intent.

Mr. OLSON. I would agree that certainly that is true.

The CHAIRMAN. What about the next 5 fiscal years—would you contemplate any increased cost to carry out the bill?

Mr. OLSON. That is highly speculative. I don't contemplate, within the next 5 years, we would have any increased cost in terms of manpower and prosecution of the statute.

The CHAIRMAN. Thank you very much.

Mr. OLSON. You are very welcome.

STATEMENT OF HON. CARLETON J. KING, U.S. REPRESENTATIVE FROM NEW YORK

The CHAIRMAN. Gentlemen of the committee, I have been requested by our colleague, Carleton King of New York, to present a statement to be included in the record. If there is no objection, the statement of Congressman King will be included in the record.

(Mr. King's statement follows:)

Mr. Chairman, it is a pleasure for me to appear before the House Committee on Internal Security and speak in support of H.R. 16742.

We have all witnessed the notorious travel by U.S. citizens to Cuba, North Vietnam, and North Korea. This travel by student adventurers, publicity seekers, and self-presumed experts on warfare and foreign policy has been in contravention of travel prohibitions promulgated by the Department of State, the authority for which is found in Title 22, Code of Federal Regulations, Section 51.72.

Generally this section provides that in the absence of specific authorization by the State Department, U.S. passports shall not be valid for travel into or through such country or area which is at war with the United States, or where armed hostilities are in progress, or when such travel would seriously impair the conduct of U.S. foreign affairs.

Willful violation of these laws and regulations purportedly subject the offender to prosecution under Title 18, U.S. Code, Section 1544. I use the term purportedly, because the fact is that in order to secure a conviction under this law, the Government must be in a position to prove that the passport was *used* in violation of the geographic restrictions which are contained therein.

It is also a fact that U.S. citizens who do travel to unauthorized countries are assisted by the complicity of hosting government officials.

Aware of the jeopardy which would confront a U.S. citizen, should his passport bear an official stamp of entry from an unauthorized country, the officials of Cuba, North Korea, and North Vietnam, have simply issued separate visas and failed to stamp U.S. passports in compliance with customary passport procedures.

Mr. Chairman, I believe that the existing passport regulations, which I have just outlined, are totally inadequate to restrict unauthorized travel and to protect the national interest.

I fully support the provisions of your bill which would restrict travel by citizens and nationals of the United States to, in, or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States.

It is my understanding that the Department of Justice is reviewing the radio broadcasts made by Jane Fonda while in Hanoi to determine possible violations with respect to the treason and sedition statutes.

It is not my intention to offer testimony concerning the reported activities of Jane Fonda, or express my opinion as to her culpability under law.

However, in connection with the legislation under consideration here before this committee, I would like to state that in my opinion restricting the travel of persons such as Jane Fonda, Ramsey Clark, and the hundreds of students who traveled to Cuba with the Venceremos Brigades, is certainly within the national interest of the United States.

I further believe that the people of this country recognize that the activities of these Pied Pipers of pernicious propa-

ganda do nothing more than play into the hands of the enemies of the United States.

It is apparent from the mail that I have received that the law-abiding citizens across the country are sick and tired of reading about the vocal protagonists who, though few in number, continue to flaunt the travel laws of the United States in promoting their own special form of allegiance to disunity and degradation of the United States.

Mr. Chairman, I commend you for your offering legislation which gets directly to the heart of the matter and I offer my support for the enactment of H.R. 16742.

/s/ CARLETON J. KING,
30th District

STATEMENT OF HON. WILLIAM J. SCHERLE, U.S. REPRESENTATIVE FROM IOWA

Mr. ZION. Mr. Chairman, I have been requested by a former member of the committee, the Honorable William J. Scherle, to introduce a statement of record at this point.

The CHAIRMAN. Do you wish to include that in the record?

Mr. ZION. Yes, Mr. Chairman.

The CHAIRMAN. No objection, so granted.

(Mr. Scherle's statement follows:)

STATEMENT BY HON. WILLIAM J. SCHERLE BEFORE INTERNAL SECURITY COMMITTEE—SEPTEMBER 25, 1972

Mr. Chairman: I wish to take this opportunity to express my support for your bill, H.R. 16742, allowing the President to restrict travel by United States citizens and nationals to, in, or through any country or area whose military forces are engaged in armed conflict with those of the United States. I have cosponsored similar legislation myself.

The many unauthorized trips by American citizens to Hanoi since 1967 have resulted in the misrepresentation of American opinion to the North Vietnamese and the entire Communist world to the detriment of our national interest, particularly to the morale of the armed forces and our prisoners of war. The publicity which always attends these friendly forays into enemy territory gives undue weight to what is still the minority view in this country, outraging the loyal sensibilities of the majority.

It is my firm belief that such unwarranted pilgrimages should be restricted, and I support legislation which will accomplish that objective.

STATEMENT OF HON. LOUIS FREY, JR., U.S. REPRESENTATIVE FROM FLORIDA

Mr. ZION. Lou Frey has a statement. He has long been interested in this subject. He regrets very much he was unable to be here in person to testify. He has a comprehensive statement he would like included in the record at this point.

The CHAIRMAN. No objection, so ordered.
(Mr. Frey's statement follows:)

STATEMENT OF LOU FREY, JR., 5TH DISTRICT, FLORIDA, BEFORE THE
INTERNAL SECURITY COMMITTEE, HOUSE OF REPRESENTATIVES,
SEPTEMBER 25, 1972

Mr. Chairman, since 1967 there have been an escalating number of American citizens traveling to restricted countries and engaging in activities in those countries which undercut the foreign policy objectives of the United States. The most recent, and perhaps most flagrant episode involved the visits of Jane Fonda and Ramsey Clark to North Vietnam.

It was assumed prior to 1969 that the Department of State had authority to refuse to issue or to revoke U.S. passports because of unauthorized travel to restricted countries or areas and to require assurances from the traveler that he would not use his passport for travel to the area and would not travel to the area. However, the Court of Appeals held in *Lynd v. Rusk* (1967) that although the Department could restrict the validity and use of a U.S. passport for travel to certain foreign countries or areas, it was without statutory authority to restrict the travel of U.S. citizens to such countries or areas.

Shortly thereafter, Stokely Carmichael took advantage of this decision and traveled to Cuba and North Vietnam to condemn U.S. aggression against North Vietnam and call for total revolution against the imperialist, capitalist, and racialist structure of the United States.

In August 1969, an American delegation comprised of SDS leaders, and other militants toured North Vietnam and held a mass rally on August 4, 1969, during which they condemned the United States, praised the North Vietnamese, and called for solidarity between the antiwar factions in the United States and North Vietnam. In September 1969, Eldridge Cleaver and a delegation of Black Panthers appeared at the World Conference of Journalists Against U.S. Imperialism in Pyongyang, North Korea, and said in part:

"U.S. imperialism seeks to turn the entire world into a huge prison under its bloody thumb and under the boots of the troops and puppets. The people of the world must unite and stage a massive, universal prison break against U.S. imperialism."

Perhaps the largest contingent to leave our shores to assist our adversaries occurred in early 1970—600 young radicals joined the "Venceremos Brigade" to cut cane for Castro at the very time when our embargo on trade with Cuba was beginning to have its desired effect. Actually, the real purpose of this SDS-sponsored expedition was not to cut cane, but to make Cuban propaganda hay. It furnished considerable propaganda ammunition to Cuba and Latin American Communists.

The recent activities of Jane Fonda and Ramsey Clark in North Vietnam further illustrates the need to control such unauthorized trips.

Jane Fonda made several broadcasts over Radio Hanoi in which she attempted to demoralize American servicemen and get them to disobey orders. Similarly, Ramsey Clark representing an organization called the International Commission for Inquiries into the U.S. war crimes in Indochina over Hanoi Radio referred to the "cruel and terrible slaughter in North Vietnam."

Both Miss Fonda and Mr. Clark condemn our action against North Vietnam, yet ignore the fact that it was the North Vietnamese who entered into South Vietnam as the aggressors. Moreover, who can recall Miss Fonda or Mr. Clark ever condemning the North Vietnamese aggressors for the vicious atrocities, deaths and casualties they have caused the people of South Vietnam over a 10-year period, and for their refusal to comply with the Geneva Convention on POW's?

The effect of the many unauthorized trips by American citizens to restricted countries since 1967 has been to: first, misrepresent American opinion to our adversaries; second, provide misinformation to the American public; third, provide propaganda ammunition and actual economic assistance to our adversaries; and fourth, to make the attainment of peace more difficult by interfering with private negotiations and other foreign policy activities.

I am of the opinion that one of the most important reasons for the intransigence of the North Vietnamese in the Paris negotiations is the blurred picture of the American electorate which has been painted by the fringe minority who have traveled to Hanoi in deliberate violation of the restrictions imposed by the Secretary of State.

A case in point is the recent trip of Ramsey Clark. Clark, while in Hanoi, stated that he expected a big McGovern victory and if McGovern were elected the war would end on the day he came into office. He also inferred that McGovern would accept Hanoi's "seven points," and Nixon would not.

H.R. 16488 which I introduced on August 18 of this year would control such flagrant intervention in the conduct of American foreign policy. This bill would give the Secretary of State the satisfactory authority, which the Court of Appeals said he presently does not have to impose and enforce area restrictions on travel. In other words, it formally gives the Secretary the authority which he exercised prior to the court decision in 1967.

Under this legislation, the Secretary could restrict travel to a country that we are at war with, where armed hostilities are underway, or when such travel would seriously impair the conduct of U.S. foreign policy. After reviewing an application to travel to a country classified as restricted, the Secretary could, however, grant permission to visit that country. Minimal penalties are provided for travel to designated countries or areas without specific authorization by the Secretary. This legislation has been supported in the past by the Department of State and Department of Justice.

H.R. 16742 is very similar to H.R. 16488. They both provide for the imposition of restrictions on travel to a country with whom the United States is engaged in armed conflict. Both would prevent future unauthorized trips by the Jane Fonda's and Ramsey Clark's. We can no longer tolerate interference by private American citizens with our diplomatic negotiations and the use of American citizens as propaganda conduits. I strongly urge this Committee to act favorably on this legislation.

STATEMENT OF DAVID M. ABSHIRE, ASSISTANT SECRETARY OF STATE FOR CONGRESSIONAL RELATIONS

Mr. ZION. The Assistant Secretary of State, Mr. David Abshire, has a statement relative to this which I would like to have included in the record at this time.

The CHAIRMAN. There being no objection, it will be so ordered. (Mr. Abshire's letter views follow :)

DEPARTMENT OF STATE

WASHINGTON

JULY 13, 1970

Honorable Emanuel Celler
Chairman, Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman :

This is in response to your requests for the views of this Department on H.R. 383 and H.R. 14893, identical bills to provide for area travel restrictions.

The bills would authorize the Secretary of State, subject to such policy or policies as the President may prescribe, to designate foreign countries or areas to which travel by U.S. citizens without special authorization would be unlawful. The Secretary would be required to determine that the country or area met one of the four criteria set forth in the bill. The Secretary could authorize travel to a country or area so restricted when he deems it to be in the national interest. Travel to restricted countries or areas without such authorization would be punishable by up to five-years imprisonment, a fine not to exceed \$5,000, or both.

Prior to the 1967 decisions of the Supreme Court in *U.S. v. Laub*, 385 U.S. 475, and *Travis v. U.S.*, 385 U.S. 491, it was assumed that section 215(b) of the Immigration and Nationality Act made it unlawful for citizens to depart the United States during a period of national emergency for travel to a restricted country or area unless they possessed passports specifically validated for such travel. The *Laub* and *Travis* decisions, however, made it clear that section 215 is a "border control" and not a "destination control" statute. That is, in a national emergency the United States can require Americans

to have a passport in order to leave the United States, but once they leave our border they can travel anywhere.

It was assumed, prior to 1967, that the Department of State had authority to refuse to issue or to revoke U.S. passports because of unauthorized travel to restricted countries or areas and to require assurances from the traveller that he would not use his passport for travel to the area and would not travel to the area. In *Lynd v. Rusk*, 389 F. 2d 940, however, the Court of Appeals held, in substance, that although the Department could restrict the validity and use of a U.S. passport for travel to certain foreign countries or areas, it was without statutory authority to restrict the travel of U.S. citizens to such countries or areas.

H.R. 383 or H.R. 14893 would provide such statutory authority by specifically authorizing the imposition of restrictions on travel to designated countries or areas and providing criminal penalties for travel to designated countries or areas without specific authorization by the Secretary. In addition, the proposed bills spell out with some specificity the circumstances under which area restrictions may be imposed. Although the Supreme Court in *Zemel v. Rusk*, 381 U.S. 1, sustained the Secretary of State's power to refuse to validate a passport for travel to a restricted area, different constitutional considerations are at stake when criminal punishment is contemplated. The proposed bill expressly confers authority upon the Secretary of State and prescribes the limit of the Secretary's delegated power.

The Department has supported similar bills in the past and does so now. We suggest, however, that the Committee give consideration to a maximum penalty of one year's imprisonment and/or a fine of \$1,000 as being a more reasonable and enforceable penalty for violation of such travel restrictions.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,
David M. Abshire
Assistant Secretary for
Congressional Relations

The CHAIRMAN. It is my understanding that Professor Charles E. Rice is on his way to testify before the committee today, but that he has incurred plane difficulties. As I stated before, it was my intention to present this measure to the members of the committee for action today, because today is the last day that bills will be accepted by the Rules Committee. What is the pleasure of the committee?

Mr. ZION. I move that the bill be presented before the committee in executive session today.

The CHAIRMAN. I note there are only four members of the committee present. I think it wouldn't be possible to take action on the measure at this time.

Mr. PREYER. I hope we could put Mr. Rice's statement in the record when he gets here. I assume we could do that. He is an able man. I

assume his testimony is going to back up what everyone else has said. We would be interested in having it.

The CHAIRMAN. Then, we can reopen the hearing if Mr. Rice does appear while we are in executive session. It is my understanding a quorum is on the way.

The Chair will declare that the public hearing is adjourned, and the committee will go into executive session.

(Whereupon, at 11:45 a.m., Monday, September 25, 1972, the hearing was adjourned.)

**STATEMENT FURNISHED TO COMMITTEE BY CHARLES E. RICE,
PROFESSOR OF CONSTITUTIONAL LAW, NOTRE DAME UNIVER-
SITY LAW SCHOOL, SOUTH BEND, INDIANA, ON SEPTEMBER 25,
1972**

Mr. RICE. This hearing concerns H.R. 16742, which would authorize the President to "restrict travel by citizens and nationals of the United States to, in, or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States." A willful violation of such a restriction would be punishable as a crime.

The right to travel "is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment." *Kent v. Dulles* 357 U.S. 116, 125 (1958). However, as the Supreme Court noted in *Zemel v. Rusk* (381 U.S. 1, 14 (1965)), "The fact that a liberty cannot be inhibited without due process of law does not mean that it can, under no circumstances, be inhibited."

In *Zemel v. Rusk*, the Supreme Court held that the Passport Act of 1926 authorized the Secretary of State to refuse to validate the passports of U.S. citizens for travel to Cuba and that such refusal by the Secretary of State is constitutionally valid, 22 U.S. Code, section 211a, the provision of the Passport Act of 1926 which was held to be a sufficiently definite authorization, merely provided: "The Secretary of State may grant and issue passports * * * under such rules as the President shall designate and prescribe for and on behalf of the United States * * *." The authorization that was upheld in the *Zemel* case is far more sweeping than the limited delegation of authority that would be made to the President by H.R. 16742. The *Zemel* case is in contrast to *Kent v. Dulles*, 357 U.S. 116 (1958), and *Dayton v. Dulles*, 357 U.S. 144 (1958), where the Court invalidated the Secretary of State's denial of a passport because the denial was based on the applicant's beliefs or associations and the authorizing statute did not give the Secretary of State authority to deny a passport on such grounds.

The restriction imposed by the Secretary of State in the *Zemel* case was upheld as sufficiently authorized by statute and the statute was held to contain sufficient standards to control the exercise of the Secretary's discretion. So also would the restriction authorized by H.R. 16742 be upheld. The restrictions in *Zemel* and in H.R. 16742, unlike those invalidated in *Kent* and *Dayton*, are based on objective considerations, e.g., the state of affairs in Cuba in late 1962 and the existence of armed conflict as provided in H.R. 16742. Neither the *Zemel* restriction nor

the restriction in H.R. 16742 is based on personal characteristics, beliefs, or associations of the would-be traveler.

In *U.S. v. Laub*, 385 U.S. 475, 1967, the Supreme Court held that Congress did not intend to make it a criminal offense to travel to a country, Cuba, to which travel had been restricted by the Secretary of State. The criminal statute in question, section 215(b) of the Immigration and Nationality Act of 1952 (8 U.S.C., section 1185(b)), was held not to be intended to make it a crime to travel in violation of an area restriction. Defendants in *Laub* had passports, but had not obtained the special endorsement thereon required by the Secretary of State for travel to Cuba. It is significant that the Supreme Court in *Laub* supported its reasoning by quoting from the report, "The Freedom to Travel," by the Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York. This report stated:

The Committee has not discovered any statute which clearly provides a penalty for violation of area restrictions, and this seems to be a glaring omission if the United States is seriously interested in the establishment and enforcement of travel controls. Knowing violation of valid restrictions should certainly be subject to an effective sanction, which is not known the case. (385 U.S. at 486).

H.R. 16742 is well designed to remedy this defect. In a precise and limited matter, it provides the needed sanction for violation of the area restrictions it authorizes.

In *Lynd v. Rusk*, 389 Fed. 2d 940 (D.C. Cir., 1967) the court of appeals held that the Secretary of State had statutory authority to forbid a citizen to take his passport into a restricted area, but that he has no statutory authority to withhold or revoke a passport on the grounds of the applicant's refusal to give assurances that he will not travel without the passport to the restricted areas:

To recapitulate, we think the Secretary may deny a passport, or revoke one already extant, when the sole travel that is intended by the citizen is to an area that the Secretary has declared restricted. But the soft support of silence from Congress does not permit an inference that it has authorized executive curtailment of the constitutionally protected "liberty" of travel to non-restricted areas to achieve the objective of restraining travel to restricted areas. 389 F.2d at 947.

The court of appeals in *Lynd* held that a congressional intent to curtail the right to travel could not be based on "the soft support of silence from Congress." Therefore, said the court:

In short, we think the Secretary has authority to control the lawful travel of the passport, even though Congress has not given authority to control the travel of the person. 389 F.2d at 947.

But the restrictions authorized by H.R. 16742 and the criminal penalties for their violation are not based on "the soft support of silence from Congress." They are based on an explicit congressional intent to authorize the President to forbid, subject to criminal penalty, travel to a specifically limited type of country or area, i.e., one whose military forces are engaged in armed conflict with the military forces of the United States. The authorization is not limited by the traveler's possession of a passport or lack of it. The congressional intent is clear. The bill is specific. It contains adequate standards to govern the Presidential discretion and it is entirely reasonable and constitutional.

In *Zemel v. Rusk*, the Supreme Court emphasized that the right to travel is susceptible of limitation:

The right to travel *within* the United States is of course also constitutionally protected, cf. *Edwards v. California*, 314 U.S. 160. But that freedom does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area or the Nation as a whole. * * * That the restriction which is challenged in this case is supported by the weightiest considerations of national security is perhaps best pointed up by recalling that the Cuban missile crisis of October 1962 preceded the filing of Appellant's complaint by less than 2 months. 381 U.S. at 15-16. (Emphasis in original.)

In the same opinion the Court stated that—

the Secretary has justifiably concluded that travel to Cuba by American citizens might involve the Nation in dangerous international incidents, and that the Constitution does not require him to validate passports for such travel. [381 U.S. at 15.]

If travel can be prohibited in "areas ravaged by flood, fire or pestilence," if passports to Cuba can be refused in the wake of the Cuban missile crisis in 1962, which did not even involve any overt hostility, it would seem plain that travel might legitimately be forbidden to, in, or through nations that are actively engaged in open combat with the military forces of the United States. To deny Congress the right to authorize the President to impose such restrictions under such limited terms and conditions as are contained in H.R. 16742, would be a gross infringement upon the congressional prerogative.

An additional reason for concluding that the travel restrictions which would be authorized by H.R. 16742 would be valid, is that the imposition of such restrictions would involve the Congress and President working together in the crucial area of national security and foreign affairs. In *Youngstown Sheet & Tube Co. v. Sawyer*, 353 U.S. 579, 1952, Justice Jackson said in a concurring opinion:

When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum for it includes all that he possesses in his own right plus all that Congress can delegate.

Significantly, the Supreme Court in the leading case of *U.S. v. Curtiss-Wright Export Corporation*, 299 U.S. 304 (1936) upheld a Presidential arms embargo imposed pursuant to congressional authorization and stated:

It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the Federal Government in the field of international relations * * *.

The congressional delegation of authority contained in H.R. 16742 would be employed by the President in this delicate field of national security and foreign relations. While even in this field the exercise of congressional and Presidential authority must be in subordination to the Constitution, nevertheless it is significant that H.R. 16742 would operate precisely in this field where the combined congressional and Presidential powers, acting together, has been given the greatest latitude by the courts.

In conclusion, it is fair to say that H.R. 16742 is a reasonable and constitutional delegation of authority to the President.

Mr. Donald G. Sanders
Chief Counsel
Committee on Internal Security
309 Cannon House Office Building
Washington, D. C. 20515

Dear Mr. Sanders:

Pursuant to our conversation, I am forwarding the
enclosed memorandum on the treason and sedition laws.

I hope that this material will be useful to you.

Sincerely,

A. WILLIAM OLSON
Assistant Attorney General

Encl
a/s

(7625)

Memorandum of Law Concerning
Treason (18 U.S.C. 2381) and
Sedition (18 U.S.C. 2387, 2388)

Treason (18 U.S.C. 2381)

Title 18, United States Code, Section 2381, provides that:

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason. . . .

Treason is a breach of allegiance to the government, and as an offense against the state, it has always been regarded as the most serious and heinous of all crimes.

In early English law, 'treason' was given a very broad scope and became an instrument of oppressing anyone who opposed the will of the King. However, to avoid such evils, the framers of our Federal Constitution, although resorting to some of the terms of the old English Statute of Edward III, commonly known as the "Statute of Treason," made great effort to carefully define the offense of treason, specifically limiting its scope. Significantly, the principal discussion in connection with the drafting of the treason clause of the Federal Constitution centered around three aspects; namely, the two-witness requirement; the concept of an overt act, and the concept of 'aiding and comforting the enemy'.

The basic law of treason was not written into the Constitution by accident. It was framed and put there by men who had been taught by experience and by history to fear the abuse of the treason charge almost as much as they feared treason itself. Treason under English law had become so broad and loose as to make treason consist not only of a breach of allegiance to the crown or adherence to its enemies, but to include the mere utterance of opinions. Many of our colonies had enacted similar broad treason statutes. None of the framers intended to withdraw the treason offense from use as an effective instrument against treachery that would aid external enemies nor did they appear reluctant to punish as treason any

genuine breach of allegiance to one's government. But the thing they did want to prevent was legislation in later years becoming so broad as to make treason consist of the mere utterance of an opinion.

The proceedings of the Constitutional Convention of 1787 reflect that Charles Pinckney proposed that Congress be given the power to declare what should be treason against the United States; however, the 'Committee on Detail' reported a draft constitution which left no latitude to create new treasons and after thorough and able discussion, this was the provision adopted. The framers combined all known protection against the extension of treason and wrote into the organic act a prohibition of legislative or judicial creations of treason. In doing so they seemed to have been concerned by two kinds of dangers: (1) the suppression by lawful authority of peaceful political opposition; and (2) the conviction of the innocent as a result of perjury, passion or inadequate evidence. To correct the first they limited treason to levying war or adhering to the enemies of the United States, giving them aid and comfort, thus making it impossible for lesser offenses to become treason. To correct the second and safeguard the procedures incident to the trial of those persons charged with treason, they provided that no one should be convicted except upon the testimony of two witnesses to the same overt act or upon confession in open court.

The Constitution of the United States (Art. III, Sec. 3, cl. 1), as well as, the statutory provision relating to treason (Title 18, United States Code, Section 2381) specifically provide that treason shall consist only (1) in levying war against the United States or, (2) in adhering to enemies of the United States, giving them aid and comfort. Unless the activities in question constitute making war against the United States or the giving of aid and comfort to an "enemy," that is, a foreign power with whom we are in a state of at least open hostilities if not war^{1/}, the

^{1/} It would appear that the treason statute would be applicable when the United States is engaged in open hostilities, even in the absence of a declaration of war. In the charge to the jury, Mr. Justice Field in U. S. v. Greathouse, 26 Fed. Cas. 18, stated:

crime of treason is not applicable. Thus, the Constitution has placed specific limitations on the crime of treason and such provisions were inserted to prevent the possibility of extension of treason to offenses of minor importance. The crime of treason, moreover, was never to be extended by construction to doubtful cases. Ex Parte Bollman, 4 Crouch 75

The crime of treason is unique among criminal statutes as regards the stringent requirements of proof which it places upon the prosecution of such cases. The Government is required to allege specific overt acts of treason upon the part of the accused and to prove each of these acts by the testimony of two eyewitnesses to the particular act. In United States v. Robinson, 1919, 259 F. 685, Judge Learned Hand wrote with regard to treason, "conviction cannot be had on the testimony of one witness together with circumstantial evidence, though it was well nigh conclusive." In the Supreme Court's decision in Cramer v. United States, 325 U.S. 1, Justice Jackson presented an exhaustive treatise on the history of the treason statute to evidence the necessity for a narrow and restrictive interpretation of the statute. He stated:

Thus the crime of treason consists of two elements: adherence to the enemy; and rendering him aid and comfort. A citizen intellectually or emotionally may favor the enemy and harbor convictions disloyal to this country's policy or interest, but so long as he commits no act of aid and comfort to the enemy,

^{1/}Footnote continued from preceeding page

"The term 'enemies' as used in the second clause according to its settled meaning at the time the constitution was adopted applies only to the subjects of a foreign power in a state of open hostility with us."

there is no treason. On the other hand, a citizen may take actions which do aid and comfort the enemy --making a speech critical of the government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things which impair our cohesion and diminish our strength-- but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason. (p. 29)

. . . to make treason the defendant not only must intend the act, but he must intend to betray his country by means of the act. (p. 31)

Sedition (18 U.S.C. 2387, 2388)

Congress enacted the first Sedition law in 1798, which law was very unpopular, provoked great resentment and expired of its own limitation in 1801. No additional Sedition legislation was enacted by the Congress until World War I, when conditions accompanying the war with Germany in 1917 resulted in the enactment of the Espionage Act of 1917. The language of the original Espionage Act of 1917 with respect to Sedition was incorporated into the 1940 edition of the United States Code, Title 50, U.S.C., Sections 33 and 34. When the Criminal Code was revised in 1948, Sections 33 and 34 of Title 50 were consolidated into Title 18, Section 2388.

The territorial applicability of the wartime Sedition statute, Section 2388, is limited by subsection 2388(d) to the "admiralty and maritime jurisdiction of the United States, and on the high seas, as well as, within the United States." (See: United States v. Powell, D.C. Cal. 1959, 156 F. Supp. 526; 171 F. Supp. 202)

Section 2388 is in effect divided into three parts:

- (a) "whoever. . .willfully makes or conveys false reports or statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies;"
- (b) "whoever. . .willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States,"
- (c) "whoever. . .willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so-"

Section 2388 is applicable when the United States is at war and, under Section 2391, the provisions of Section 2388 are made applicable during the current period of national emergency, which was proclaimed by President Truman on December 16, 1950.

Section 2387 is the peacetime sedition statute. It provides for the punishment of anyone who, with the intent to interfere with or impair the loyalty, morale, or discipline of the military or naval forces, advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the Armed Forces, or distributes any written or printed matter to the same effect.

In view of the First Amendment rights of freedom of speech and of the press, the courts have imposed stringent standards of proof to establish a violation of the sedition statutes. When the activity consists of written or spoken words, it is necessary to meet the test laid down by the Supreme Court in Schenck v. United States, 249 U.S. 47. In that case, Mr. Justice Holmes stated:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. (249 U.S. at 52)

The 'clear and present danger' doctrine has through the years been imposed as a guide in determining the constitutionality of restrictions on the right of free speech and free press. Under such doctrine, freedom of speech and of the press is susceptible of restriction when and only when necessary to prevent grave and immediate danger to interests which the Government may lawfully protect. The 'clear and present danger' test of the Schenck case has afforded from 1919 to present date a "practical guidance" in various lines of cases in which the scope of constitutional protections of freedom of expression was in issue. Moreover, it has provided a so-called 'working principle' that "speech could not constitutionally be restricted unless there would result from it an imminent, i.e., close at hand substantive evil."

During World War II only one case, Hartzel v. United States, 322 U.S. 680, arose under the sedition statute to be decided by the Supreme Court. In this case, the defendant in 1942 wrote three articles condemning our wartime allies and urging that the war be converted into a racial conflict, and mailed the publication to 600 persons, including high-ranking military officers. The Supreme Court reversed a conviction for wilfully causing insubordination in the military forces on the ground that the intent required by the statute was not shown. In Hartzel it was established that two major elements are necessary to constitute an offense under the statute. The first, a subjective element, a specific intent, which springs from the statutory use of the word "willfully," to deliberately and with specific purpose do the acts proscribed by Congress; and the second, an objective element, "consisting of

-7-

a clear and present danger that the activities in question will bring about the substantive evils which Congress has a right to prevent." (322 U.S. at 686, 687) The Court in Hartzel found that the pamphlets distributed by the defendants contained "vicious and unreasoning attacks on one of our military allies, flagrant appeals to false and sinister racial theories and gross libels of the President," but contained nothing specifically intended to cause insubordination, disloyalty, etc. in the military forces or to obstruct the recruiting and enlistment service. The court ruled in the Hartzel case that ". . . while such iniquitous doctrines may be used under certain circumstances as vehicles for the purposeful undermining of the morale and loyalty of the armed forces, and those persons of draft age, they cannot by themselves be taken as proof beyond a reasonable doubt that petitioner had the narrow intent requisite to a violation of this statute." (322 U.S. at 687)

The most recent case under Section 2388 was United States v. Powell, 171 F. Supp. 202. The activities with which Powell and his two co-defendants were charged occurred in China and Korea during the Korean War. The Court in that case held that the Government's key evidence, which related to Powell's activities outside the United States, was inadmissible, as Section 2388 was not deemed to have extraterritorial application. As a consequence of the Court's ruling, it was necessary to dismiss the case.

The language of Section 2387, per se, does not contain any impediment to prosecutions under the section. Rather, as noted above, it is the stringent evidentiary requirements which make it difficult to establish violations of Section 2387. Generally, the same evidentiary problems also apply to Section 2388. However, the language of Section 2388 contains an additional impediment to prosecutions. It contains a geographic limitation in that it is made applicable "within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States." As indicated above, the Court in the Powell case held that this language precludes the applicability of Section 2388 to activities which occur in foreign countries.

[*Congressional Record*, August 15, 1972, pages H7656-7657.]

RE ACTIVITIES OF JANE FONDA IN NORTH VIETNAM

(Mr. ICHORD asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. ICHORD. Mr. Speaker, late last week the Committee on Internal Security discussed, at some length, the question of whether or not to issue a subpoena to the actress, Jane Fonda, with respect to broadcast statements she made over the Communist Radio Hanoi to our troops in Vietnam.

It was agreed by the committee that it would be best, at this time, to give the Justice Department time to complete its announced inquiry into the Fonda affair before considering any further course by the committee.

At the request of my colleagues on the committee, I addressed a letter which was hand-delivered Friday afternoon to Attorney General Kleindienst setting forth the committee's concern with this matter and our desire to have a report from the Justice Department by September 14 or an explanation from a representative of the Department on that date regarding what can and should be done with respect to Miss Fonda's activities in the capital of our enemy.

For the benefit of my colleagues in the House, Mr. Speaker, I include the contents of my letter to the Attorney General in the RECORD at this point:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES, COM-
MITTEE ON INTERNAL SECURITY,
Washington, D.C., August 10, 1972.

Hon. RICHARD G. KLEINDIENST,
Attorney General of the United States, De-
partment of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: The Committee on Internal Security met this morning in executive session to consider a request that a subpoena be issued to require Jane Fonda to appear before the Committee in regard to her travel to North Vietnam and radio broadcasts to U.S. military forces during July 1972. During the meeting a number of reasons were expressed as a basis for opposition to the issuance of a subpoena. Important factors in the ultimate determination of the Committee were that the facts seemed to be already rather well-known, that the matter was under study by the Department of Justice and Fonda would be entitled to the full protection of the Fifth Amendment, that any such hearing might work to the prejudice of the Government in the event prosecution is undertaken and that the Committee's overriding interest is not

in what additional information might be secured from Fonda, but rather in any insufficiency in the terms of the law or in its enforcement.

I am sure that you recognize the pernicious nature of Miss Fonda's statements to our servicemen, and the seriousness with which nearly all Members of Congress view her conduct. Although it might be fairly said that public support for American involvement in the Vietnam conflict is steadily declining, such aid and comfort to a nation with which we are engaged in hostilities is nevertheless condemned by the public. But whatever political or public reaction might obtain under the circumstances, I am sure you agree that the Department of Justice has a most solemn obligation to engage the full weight of the law against conduct which the Congress has made criminally punishable.

The Committee has reviewed the treason, sedition and other relevant statutes. It has also been informed of Fonda's travel itinerary, and has studied the transcripts of her broadcasts while recently in Hanoi. It is not difficult to perceive why a cry of treason has been raised. But if the burden of proof is too great for treason, would not a prima facie case exist under Section 2387 of Title 18, United States Code or even Section 2388, notwithstanding the jurisdictional limitation?

In discharging its responsibility to the Congress to insure that statutes within its oversight jurisdiction are being duly enforced by the Executive Branch, the Committee resolved that the staff investigation of Fonda's activities will continue, and in the event the Justice Department determines that the broadcasts of Jane Fonda from Hanoi during July 1972 do not constitute treason or sedition, or that her conduct cannot be reached by existing statute for any other reason, then the Department is requested to furnish a report to the Committee with recommendations for legislation which would be effective to impose criminal sanctions under similar circumstances in the future. Desiring to resolve the questions at an early date, but hoping to avoid an unreasonable burden upon the Department, the Committee voted to request that the report be submitted by September 14, or in the alternative, that a representative of the Department appear before the Committee on that date.

Your cooperation and assistance in providing an analysis of the federal criminal law vis-a-vis the recent conduct of Jane Fonda will indeed be appreciated. Would you please advise me as soon as possible whether the Department will furnish a report on or before the above date or will provide for the appearance of a representative so that arrangements can be made for a meeting of the Committee.

Sincerely,

RICHARD H. ICHORD,
Chairman.

[*Congressional Record*, September 20, 1972, pages H8613-8616.]

BILL TO RESTRICT TRAVEL TO COUNTRIES ENGAGED IN ARMED CONFLICT WITH THE UNITED STATES

(Mr. ICHORD asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. ICHORD. Mr. Speaker, in July of this year the actress Jane Fonda traveled to North Vietnam. She did so without a passport validated for travel to that country, without informing the State Department of her intention to travel to North Vietnam after first going to Russia, and without seeking any official authorization for the trip. Her actions, of course, were not the first we have witnessed in this vein. North Vietnam seems to be becoming a popular destination. It certainly is a means for guaranteeing publicity for the junketeer. These journeys to North Vietnam have been for a variety of purposes. The most recent ones have served to spread the enemy propaganda about dike bombing, they have aided the enemy's design in releasing prisoners of war in a dribble, they have falsely publicized the kind of treatments being afforded to the prisoners of war, and they have endeavored to sap the will and morale of our servicemen in Southeast Asia. Jane Fonda, serving as a tool of the Hanoi propagandists, made more than 20 broadcasts to American troops. Her statements are of a most pernicious nature. In my judgment they were clearly designed to engender doubts in the minds of our servicemen concerning their loyalty to the United States and their willingness to carry out military orders. This is the stuff of which sedition is made.

Over Radio Hanoi, directing her remarks to American servicemen, Jane Fonda said for example:

Please think of what you are doing—have you any idea what your bombs are doing when you pull the levers and push the buttons?—how does it feel to be used as pawns?—tonight when you are alone ask yourselves: what are you doing? Accept no ready answers fed to you by rote from basic training—I know that if you saw and if you knew the Vietnamese under peaceful conditions, you would hate the men who are sending you on bombing missions—if they told you the truth, you wouldn't fight, you wouldn't kill—you have been told lies so that it would be possible for you to kill.

It would require a gross distortion of logic to conclude that these statements were not intended to create doubt in the mind of the listener. Is it not obvious that these remarks were intended to serve as a stimulus for diminished morale and loyalty, or for refusal of duty? It was the purpose of the sedition statute to prohibit such conduct. Regardless of how we may feel about the war in Indochina, we must not sanction efforts to destroy the morale and discipline of our troops.

The committee has been assisted in analyzing the psychological effects of the Fonda broadcasts on American servicemen by several experts in the field of psychological warfare. For the benefit of my colleagues I am appending to these remarks two of the analyses which have been prepared by these experts in their field. A review of these analyses is most helpful in demonstrating the serious effects of the broadcasts of Jane Fonda. Since it did not appear that the Department of Justice had consulted any such experts in order to be apprised of the likely effects of the broadcasts, I have also made these analyses available to the Department. The analyses are keenly relevant. The broadcasts cannot be studied in a vacuum. Although the American involvement in the war in South Vietnam is winding down, we must not lightly regard or dismiss blatant attempts to destroy troop morale at this critical juncture in our history.

Soon after learning of her initial broadcasts, my colleague from Georgia, Congressman FLETCHER THOMPSON, asked that the Committee on Internal Security conduct an investigation of the matter, giving consideration to the issuance of a subpoena to Miss Fonda. The committee met on August 10 to take the request of Mr. THOMPSON under advisement. By a vote of 8 to 1 the committee agreed to ask the Department of Justice for a report on the case. The text of my letter to the Attorney General conveying the wishes of the committee was placed in the CONGRESSIONAL RECORD of August 15, page H7656.

The Department of Justice subsequently advised that a report could not be submitted by the date which the committee requested, inasmuch as the matter was still under investigation. Then, in response to my invitation, Assistant Attorney General A. William Olson appeared before the committee in executive session on September 19 to orally re-

view the subject. Additionally, the committee heard the testimony of Mr. Robert Johnson, Deputy Director and Chief Counsel of the Passport Office, in relation to Fonda's travel and the difficulties in enforcement which are generally encountered by the Department of State. The testimony of these witnesses helped to clarify weaknesses in the law which make it inordinately difficult to apply criminal sanctions to conduct such as that of Jane Fonda. Although the Department of Justice testified that the Fonda case is still under prosecutive consideration, it is rather obvious that the executive branch is encountering severe difficulty in applying present statutes to the Fonda circumstances.

In considering the applicability of the treason or sedition statutes to activities of U.S. citizens within North Vietnam it does not take a great deal of imagination to recognize that witnesses are not readily available to prove the conduct in a court of law. If we can generally agree that the activities of U.S. citizens in North Vietnam have been overwhelmingly adverse to our national interests, then the solution is to simplify the evidentiary requirements by making unlawful all travel to countries with which we are engaged in armed conflict, except insofar as deemed necessary by the President in the national interest.

In analyzing the Fonda broadcasts, as well as the activities of others who preceded her, it has appeared to me that a new statute is needed which would authorize the President to restrict travel to countries whose military forces are engaged in armed conflict with ours. The President would be empowered to make exceptions in the national interest, but all other travel to such countries would be unlawful. I think it is fair to say that the general attitude of the committee's witnesses is supportive of this legislation.

In introducing this bill today, the text of which follows, I am joined by 5 other Members of the Committee on Internal Security, Mr. ASHBROOK, Mr. DAVIS, Mr. THOMPSON, Mr. ZION and Mr. SCHMITZ.

Mr. Speaker, I feel very strongly that Miss Fonda violated the criminal laws of the United States when she travelled to North Vietnam and made the foregoing propaganda broadcasts to American troops. I also feel very strongly that she will never be prosecuted by the Department of Justice. However, I cannot fault the Department of Justice altogether. There are very serious evidentiary difficulties as well as the consideration that prosecution will result in mak-

ing a martyr out of a person who does not deserve to be a martyr and also the probability of projecting a trial into the political arena much like the Chicago Seven conspiracy trial.

Therefore I firmly believe that the only way to obviate the controversy that has raged over the heads of Fonda, Ramsey Clark and others is to effectively forbid travel by any American citizen to a country with which the United States is having hostilities without prior permission.

I have no doubt about the constitutionality of the measure. It is constitutional. I can think of no legitimate reason why any American citizen should be permitted to travel to a hostile country without proper authorization. This measure represents one of the many realistic choices that this free society must begin to make between freedom and anarchy and license if we are to remain a free society.

A bill to amend section 4 of the Internal Security Act of 1950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 4 of the Internal Security Act of 1950 (50 U.S.C. 783) is amended by adding immediately following subsection (c) of such section the following new subsection:

"(d) The President may restrict travel by citizens and nationals of the United States to, in, or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States. Such restriction shall be announced by public notice which shall be published in the Federal Register. Travel to such restricted country or area by any person may be authorized by the President when he deems such travel to be in the national interest. It shall be unlawful for any citizen or national of the United States willfully and without such authorization to travel to, in, or through any country or area to which travel is restricted pursuant to this subsection."

(b) Section 4 of such Act is further amended by redesignating existing subsections (c) through (f), as (d) through (g).

BIOGRAPHICAL DATA OF FRANCIS M. WATSON, JR.

Francis M. Watson, Jr., is a graduate of the University of Georgia where he received both a BS in Education and a Masters degree in Journalism. In the early 1960's he was Deputy Manager of an information analysis center for the American Institutes for Research where he conducted research in insurgency and propaganda techniques and revolutionary tactics. He became a specialist in media analysis whereby public opinion trends may be determined from newspapers and other information sources. In 1970 he became chief analyst for a Washington, D.C., firm,

"National Media Analysis," where he studied the so-called "underground" press and edited published reports detailing the propaganda impact of such newspapers with respect to revolutionary and protest movements in the United States. He currently manages his own firm, Media Research, located in Dunn Loring, Virginia.

SEPTEMBER 11, 1972.

DR. JOSEPH E. THACH,
Research Analyst Committee on Internal Security,
House of Representatives, 309
Cannon Building, Washington, D.C.

DEAR DOCTOR THACH: The enclosed selection of broadcasts, attributed to actress Jane Fonda, were reviewed as you requested. Frankly, although I have poured over literally thousands of pages of underground press material in the past few years, I have found little that I felt qualified more precisely as purely psychological warfare than these. I use this term in the sense of Dr. Paul M. A. Linebarger's classic book on the subject and of the FM 33 series of field manuals produced by the U.S. Army since the 1940's.

I have to discount Miss Fonda's words as constituting an anti-war protest, not only because they were allegedly directed toward U.S. military forces in the field—a group hardly in a position to act on anyone's protest without disobeying the orders they are operating under—but because she says as much in her text. In other words, she is not addressing her remarks toward influencing the voting behavior of fellow citizens, or toward legislators who are passing on military appropriations etc., or the President, Secretary of Defense, or even commanders in the field, she is, in her own words, addressing herself to men at the operational level of military units and suggesting to them that they not follow their orders.

As I noted in the beginning, her techniques, phraseology, and themes are more comparable to combat propaganda operations, designed to encourage misbehavior on the part of troops, than anything else I can think of. For example, her words seem to fit the following passage rather well:

... Another major direction of the propaganda effort is to emphasize to the enemy soldier the dangers of combat. Such an appeal, combined with a questioning of the worth of his country's war aims, is designed to encourage the enemy soldier to be particularly cautious and to malingering and avoid danger at every opportunity, thus reducing the combat effectiveness of his unit. [p. 12, U.S. Army FM 33-5, January 1962]

Perhaps more specifically to the Vietnam situation, I see the texts of these broadcasts as falling quite handily into the statement of a primary psychological goal of insurgent forces as stated in the 1966 edition of this same manual:

... to convince the world and the local population that the motives of nations assisting the threatened government are false. Through national and international media, the insurgent will attempt to malign the motives of all assistance to the local government. Economic exploitation, neo-colonialism, genocide, and capitalism seeking raw materials and markets are some of the numerous themes used to elicit sympathy and support. [p. 35, U.S. Army FM 33-5, October 1966]

... Frenchmen were told that the war waged by France was unjust, that the FLN was justified in fighting for independence, that the very principles invoked by the FLN were learned from the French Revolution, etc. . . . [p. 279, *Undergrounds in Insurgent, Revolutionary, and Resistance Warfare*, Special Operations Research Office, The American University, November, 1963]

Certain passages in Miss Fonda's material call to mind descriptions of propaganda aimed at the French in the Algerian experience:

Similar material, of course, can be found in the literature on most revolutionary operations in the past fifty or sixty years. The Huks in the Philippines, for example, used some of the same themes.

Getting directly to the resemblance of Miss Fonda's material and traditionally accepted psychological warfare techniques and the prospects of this material affecting troop morale, let me call attention briefly to the origin, history, and theory of this branch of military tactics. As pointed out in U.S. Army manuals, these techniques are as old as recorded history, but came into habitual use in the U.S. services in World War I. There these efforts focused on surrender appeals to hungry enemy soldiers in trenches. In World War II the techniques were further perfected and broadened, but still, as far as combat troops were concerned, the propaganda appealed heavily to hungry or beleaguered troops or forces whose chances of victory and eventual return to their homeland were rather easily shown to be poor. And, more often than not, that has been the case, the propagandist could see a host of personal deprivations among the enemy troops he could seize upon. Even the Tokyo Rose type of effort, at the strategic level, dwelled on the length of time troops had been away from home and played upon their being out of communications with their families and the home scene.

Part of the intelligence operation connected with the propaganda effort has always been to find out what the target troops did and did not have. It would always have been ridiculous to beam "hunger appeals" to well-fed troops or "we have got you surrounded" messages to carrier-based pilots. But, the application of the techniques has generally been to make the propaganda appeal on the lowest rung of the "physiological-need" ladder—tired, hungry, cold, beaten men's minds are at the lower rungs and it is futile to appeal to them with more abstract messages.

Perhaps many of us have become used to judging propaganda in these terms—and perhaps we have become used to judging troop morale primarily on these bases. But, of course, the propaganda theory has always been that if the baser needs were satisfied the propagandist had to raise his sights. When the next level of needs were satisfied he had to raise them again. When personal

welfare and safety were not really in much jeopardy he had to get almost completely out of those areas or his propaganda would simply be laughed at.

Look at Vietnam. The U.S. troops have had essentially everything they could possibly want for, in terms of creature comforts. And, compared to other military experience in world history, their tours have been short, their communications with home good, and so on. I don't mean to suggest that Vietnam duty is a picnic—having been all through the Vietnam command, I know better. It would be foolish, however, for any propagandist to try to get at those troops with the old ploys. About the only themes left are precisely those Miss Fonda harps on. Nothing in the books suggests the propaganda will therefore be any less effective—a well-fed man can simply be reached on matters that a hungry man would not even listen to.

Thus, in the broadcasts it is easy to spot attacks on what is the basic element of any healthy, well-attended fighting man's spirit—the justice of his cause. Obviously, a man who is hungry enough, will kill just to eat—a frightened man will kill to preserve his own life, etc.—but a man who is not so deprived or so threatened must believe in his cause in order to take another human life. Keep pounding at him with arguments otherwise—supported by evidence that the obvious enemy is not the only one who says this—and you begin to get to him.

Then, inject the "war crimes" fear—the "even you may have to answer for this behavior later!" Use as a background the "women and children" plea, support it with the "I am seeing it with my own eyes, and I am an American, too" credibility potential, and lace it with allusions to the beauty of the women and the pastoral nature of the countryside. Come in with the "inhumanity of buttons and levers" against an enemy you don't have to face, and the tearing of flesh with plastic and metal. It is all in Miss Fonda's text and it is just as it should be, from the standpoint of good propaganda operations.

Finally, there are some distinct advantages to Jane Fonda. American movie star, and frequent personality around Army posts, as a speaker. She is immediately known. She is glamorous. She has all the trappings of self-sacrifice, and she has rapport. She knows

youth and she knows the Army. In this respect she is better than any Tokyo Rose history has ever known—she is a walking encyclopedia of *current, cultural* and technical intelligence on the U.S. military and the young people who occupy so many of its ranks. She is even an expert on the anti-military movement. She mentions that and thus provides a readily available philosophy and group-association for her listeners.

Just in case all of these things will miss some people, she puts in the personal risk, the prisoner-of-war threat, and the people back home crying over the men overseas, and tops that off with hints that there won't be a job or a place in life for the returning veterans. It is quite complete.

Again, these broadcasts are, in my opinion, *good, military propaganda. Whether or not they affect troop morale is a matter of assessment, but there is nothing wrong with the design.*

Sincerely,

FRANCIS M. WATSON, Jr.

PREPARED STATEMENT: BRIG. GEN. S. L. A. MARSHALL, USA (RET.)

Gentlemen of the Committee, I prize the confidence placed in me implied by your invitation to appear and add my witness to that of the other retired officers from whom you are hearing. I am not—I was not—a professional officer. But while my active service has been as a Reservist, particularly my support, my consistent backing, has always come from the Regular Army. I have known every Chief of Staff of the Army since John J. Pershing and in some measure I have served as an adviser to every holder of that office from the time of George C. Marshall. That is perhaps less important than that I have seen more of the Army under a greater variety of conditions than any American past or present. My first active service was in 1917 which, as I recall, puts me in the same bracket as Congressman Pepper though I have not touched base with him since one week after Pearl Harbor. My last active field service was in Vietnam, May-June, 1968, just 51 years after my start. My most recollections in uniform occurred one week ago, I cannot recap the whole thing for you; it would be very boring. Suffice to say that I had extended combat duty in both World Wars, Korea and Vietnam. More to the point, in World War II, during the first year, I was Chief of Orientation of the Army and then

became one of the three officers assigned by George C. Marshall to establish the Historical Division. In the immediate postwar period, at General Eisenhower's direction, I wrote the official doctrine on leadership for the officer corps of all armed forces, a work that still stands.

AUGUST 28, 1972.

TO ROBERT M. HORNER,
Chief Investigator,
HR Comm on Internal Security,
Washington, D.C.

DEAR MR. HORNER: You wrote me asking my judgment as to the likely effect of the Jane Fonda broadcasts out of North Vietnam on U.S. service people stationed in that area.

First as to my credentials, the following points should be pertinent and sufficient, though there are others:

1. During WW II, I was special adviser to high command Central Pacific on psywar problems, in particular, how to increase our take of POWs, and in this I succeeded. I had the same advisory role in Korea, 1950-51.

2. In between wars I was called as an expert witness on this subject by the directors of Project Vista.

3. From 1955-58 I was a member of Special Ops Panel, D of D, responsible for scientific guidance on psywar ops.

There is no question about the intent of the Fonda broadcasts. The evidence *prima facie* is that the purpose is to demoralize and discourage, stir dissent and stimulate desertion. But then, that is not the question you posed.

Would it have any one or all of these effects provided the words of the broadcaster were heard by a vulnerable individual? Here I speak of the Fonda production as a whole. There is no reason to doubt that it would. To be effective, what is said has to be credible. When the propagandist speaks in the idiom of the audience to whom the words are directed, and in reporting as an eye-wit-

ness, cites facts, objects and circumstances with which the listener is likely to be familiar, that meets all of the requirements that insure maximum belief.

I would speculate that Miss Fonda gets help in the preparation of her broadcasts. They are expertly done and are models of their kind.

All of this having been said, as to the main question of whether she did material damage to the well-being of forces in Asia, or for that matter, in the ZI, I am unable to answer.

I would stand on the general proposition that in the occurring circumstances, when any fellow citizen is permitted with impunity to go to such extremes, men and women in the serving forces feel resentful, and in the overwhelming majority, to the degree that they believe they have been let down by government because it does not act, their own feelings of loyalty become taxed. The hurt here is long-term and indirect.

That still does not answer the question. I have no idea how many serving people heard Miss Fonda, or of those who heard, what percentage had previously discounted her as a liar, a trouble-making subversive or a half-cracked female. One would need to know such things to make an intelligent estimate.

I do know we have an extremely sensitive situation in Indochina, one probably without precedent in our history. On returning there in July, 1970 to get a measure of troop morale and discipline the Chief of Staff, USA, felt so much alarm at what he found that on getting back to Washington he visited the President to warn him that "anything might happen." That would include large-scale mutiny. Where the balance is just that delicate, any act of aid and comfort to the enemy of the United States could become the fatal straw.

Faithfully yours,

S. L. A. MARSHALL,
Brigadier General Retired.

JULY TRAVEL ITINERARY OF JANE FONDA

From various descriptions of her visit in the media, along with her own statements at press conferences held in Hanoi (July 20), Paris (July 25), and New York (July 27), it is possible to describe an approximate sequence to Fonda's activities between July 8 and 22:

- July 8 - Arrival in Hanoi
- July 9/11 - Visit to Hanoi "War Museum" (containing alleged specimens of U.S. fragmentation and alleged "chemical" bombs) and Bach Mai (suburb of Hanoi which also reportedly has a jet fighter field) to view alleged bomb damage to the hospital there.
- July 12 - Visits to Nam Sach District ("60 kilometers east of Hanoi") and Hong Phong Village to view bomb damage to dikes and populated areas.
- July 13/16- Unknown activities, but Fonda later claimed to have "traveled hundreds of miles throughout the bombed regions" in the days preceding her Hanoi press interview of July 19 with Jean Thoraval (a French AFP reporter who with several other Western correspondents, has promoted allegations that the U.S. is deliberately bombing the dikes and areas with non-military targets)
- July 14 - First taped Fonda broadcast to GIs via Radio Hanoi.
- July 17/18- Visits Nam Dinh district, described as a main textile center of North Vietnam, to observe alleged bomb damage to "non-military" targets.
- July 17 - Second broadcast to GIs via Radio Hanoi in which she described previous visits to Bach Mai Hospital and Hanoi War Museum.
- July 18 - Interview with captured U. S. Airmen in Hanoi.
- July 19 - Interview with AFP correspondent Jean Thoraval (cf. above) which is mainly an anti-U.S. denunciation of the war and conversely, a propaganda piece to stress the "determination" of the North Vietnamese to resist. Fonda added that she was forced to take refuge at a road-side shelter during a U.S. raid of July 18.

- July 19 - Third broadcast to GIs via Hanoi Radio.
- July 20 - Press Conference at "Hanoi International Club" where she described her visits to the countryside since July 8, her earlier meeting with U. S. PWs and concluded with her usual anti-U.S. diatribe.
- July 20 - Radio Hanoi broadcast, described as a Vietnamese translation of a Fonda statement, on the North Vietnamese "liberation" of Quang Tri Province and how the ARVN counteroffensive was doomed to failure; fourth broadcast to GIs explaining U.S.-SVN violations of the Geneva Accords of 1954.
- July 21 - Fifth and sixth broadcasts to GIs, both aimed at U.S. fliers, on alleged war crimes and veiled suggestions to refuse to fly further combat missions.
- July 21 - Fonda meets with North Vietnamese Nguyen Duy Trinh where she claimed to have "witnessed U.S. crimes in Hanoi...Hai Hung, Ha Tay and Nam Ha provinces" and expressed thanks to him for distinguishing between "U.S. imperialists" and "The American people who are friends of the Vietnamese people in the struggle for peace and democracy." Fonda also told the Vice Premier that "she was convinced that under the wise leadership of the Vietnam Workers Party and the DRV Government the Vietnamese people will certainly win brilliant victory."
- July 21 - Fonda broadcast to "the Vietnamese People"
- July 22 - Fonda departed Hanoi. "Seeing her off at the airport," a Radio Hanoi broadcast noted, "were members of the Vietnam Committee of Solidarity with the American People and the Vietnamese Film Artistes Association"; stopped at Vientiane, "escorted by a French photographer."
- July 23 - Arrives in Paris via Moscow on Aeroflot flight; delayed tape broadcast to "South Vietnamese Youth" on alleged repressions of the Thieu government and the VC struggle against it.
- July 24 - Seventh Radio Hanoi broadcast to GIs (noted as having been recorded July 16, 1972).

- July 25 - Press Conference in Paris.
- July 27 - Arrival in New York.
- July 28 - New York Press Conference. Basically the same rhetoric as the Paris press meeting.
- July 28 - Eighth broadcast to GIs (delayed tape ca. July 18-19)
- July 29 - Delayed tape (in English) to "Saigon Soldiers". (In English to ARVN? Also meant for American ears with respect to desertion?)
- July 29 - Arrival in Los Angeles.
- July 31 - Attended Los Angeles premiere of "F.T.A." and announces she is "abandoning her career" until after the November election "in order to campaign against the Vietnam War."

LIST OF RADIO HANOI BROADCASTS BY JANE FONDA

I. FONDA BROADCASTS TO GIs, JULY-AUGUST, 1972:

<u>DATE/TIME</u>	<u>IDENTIFICATION AS ADDRESSED TO GIs WITHIN CONTEXT OF MESSAGE</u>
1. 7/14/72, 0246 GMT	X - "All of you in the cockpits of your planes...in the 7th Fleet"
2. 7/17/72, 1300 GMT	X - "U. S. Servicemen"
3. 7/19/72, 2000 GMT	X - "American Servicemen"
4. 7/21/72, 1000 GMT	X - "U. S. Pilots"
5. 7/22/72, 1300 GMT	X - "U.S. Flyers and Airmen"
6. 7/20/72, 1300 GMT	X - "the U.S. men who...have been sent here to fight"
7. 7/24/72, 1300 GMT	X - "U.S. pilots and airmen"
8. 7/25/72, 1300 GMT	X - "U.S. pilots and airmen"
9. 7/28/72, 2000 GMT	X - "U. S. Servicemen"
10. 7/30/72, 2000 GMT	X - "American GIs"
11. 8/15/72, 1300 GMT (recorded 7/20/72)	X - "American Servicemen"
12. 8/22/72, 1300 GMT (recorded ca.7/22/72)	X - "American Servicemen"

Supra: 4 other English-language broadcasts but addressed to (1) SVN People (7/21/72); (2) Saigon Students (7/27/72); (3) "Saigon Soldiers" 7/29/72; (4) Press Conference of 7/20/72.

II. OTHER FONDA BROADCASTS, JULY-AUGUST, 1972:

1. Hanoi Domestic Service in Vietnamese, 0430 GMT, 7/20/72,
re "Quangtri Liberation" by NVA.
2. Hanoi in English to Europe, Africa and Mid-East, 2000 GMT, 7/20/72,
re Recorded Passage from Her Hanoi
Press Conference "Statement."
3. Liberation Press Agency (Clandestine) in English to E. Europe and the Far
East, 1513 GMT, 7/21/72. re "Message
to South Vietnamese People."
4. Hanoi in Vietnamese to South Vietnamese, 0330 GMT, 7/23/72
re "Letter to Southern Youths."
5. Hanoi in English to American Servicemen Involved in the Indochina War,
1300 GMT, 7/26/72. re "Talk with
Saigon Students."
6. Hanoi in English to SE Asia, 1000 GMT, 7/29/72
re "Message to Saigon Soldiers."
7. Liberation Radio (Clandestine) in Vietnamese to South Vietnam, 1400 GMT,
8/1/72 re "Fonda...Message to Mme. Binh
in Cuba" sends her a "warm kiss."
8. [Article] Hanoi PHU NU VIETNAM (in Vietnamese) No. 297 (8/1/72), pp. 16-17,
re Fonda Article on "Women's Struggle
in U.S."

TEXTS OF FONDA'S BROADCASTS TO U.S. SERVICEMEN

REPORT ON JANE FONDA'S ACTIVITIES, STATEMENT ON BOMBED DIKES

Hanoi VNA in English to Havana, ~~SECRET~~ ~~SECRET~~ ~~SECRET~~ ~~SECRET~~ ~~SECRET~~

[For Nguyen Duy Phuc, correspondent of Voice of Vietnam]

[Text] Hanoi--visiting American actress Jane Fonda July 12 went to see the dikes bombed by American planes the day before in Nam Sach district, Hai Hung Province. She noted that in the area she visited, it was easy to see that there are no military targets, there is no important highway, there is no communication network and there is no heavy industry. In her assessment, the U.S. has made deliberate attacks on dikes to jeopardise life and terrorise the people.

Later she visited Hong Phong village, remote locality far from major communication lines and industrial centres. On July 11, at daybreak when the villagers were about to begin farm work, U.S. war planes raced in and wantonly bombed a hamlet in the village. Many houses were blasted, fruit trees mangled and household furniture was seriously damaged. Two old persons were killed and many others wounded.

Jane Fonda felt great indignation at this U.S. attack on civilian populations. In the past few days, she had contacts with many workers, peasants and intellectuals to gather information. She called on the special representation of the RSV in Hanoi, had conversations with a number of fighters, artists and victimized people coming from South Vietnam. She was cordially received by Nguyen Phu Soai, acting head of the special representation.

Statement by Jane Fonda, After Visiting Dikes and Dams at Nam Sach Hit by U.S. Aircraft

Yesterday morning on ~~SECRET~~ ~~SECRET~~, I went to the district of Nam Sach to see the damage that has been done to the dikes in that district. And I wondered what has been going on with the hands of those who were pulling the lever and dropping the bombs on the fields and on the dikes of the Red River Delta. Do you know, for example, that for centuries since the Middle Ages, the Vietnamese peasants have built, built up, and reinforced a great complex network of dikes which hold back the torrential water of the rivers flowing down from the mountains in summer during the monsoon season.

Without these dikes 15 million people's lives would be endangered, and would die by drowning and by starvation. Anthony Lewis from the New York TIMES wrote an article just before I left the U.S. in which he said that successive U.S. administrations had rejected the ideas of bombing the dikes in the Red River Delta, because they all felt the dikes aren't entirely military targets. This was the type of terrorist tactic that is unworthy of American people and of American flags. But today, American Phantom jets are bombing the strategic points in the dike networks in this area.

In the area where I went yesterday it was easy to see that there are no military targets. There is no important highway, there is no communication network, there is no heavy industry. These are peasants, They grow rice and they rear pigs. They are similar to the farmers in the midwest many years ago in the U.S. They are happy people, peace-loving people. When I went by walking on the way to the dikes to see the damage, would it be made enough I was an American and I was afraid of the reaction would be taken by the local people. [Sentence as received] But they looked at me curiously and I saw no hostility in their eyes. I looked very carefully. I thought curiously. I am the woman. They seemed to be asking themselves: What kind of people can Americans be, those who would drop all kinds of bombs, so carelessly on their innocent heads, destroying their villages and endangering the lives of these millions of people.

Fuller Version of Statement

Hanoi VNA International Service in English [REDACTED]

[Text] Hanoi VNA July 14--Contrary to the statement of U.S. Assistant Secretary of Defense Daniel Henkin who claimed that U.S. planes on July 12 only hit military targets in Nam Sach district, about 60 kilometers east of Hanoi, actress Jane Fonda now on a visit to North Vietnam asserted that "there was no military target" in the bombed area.

She went to the place shortly after the raid took place and made this comment over Voice of Vietnam Radio, addressing all the U.S. servicemen involved in the bombing of North Vietnam:

Yesterday morning, [REDACTED], I went to the district of Nam Sach to see the damage that has been done to the dikes in that district, and I wondered what has been going on with the hands of those who are pulling the lever and dropping the bombs on the fields and on the dikes of the Red River Delta. Do you know, for example, that for centuries since the middle ages, the Vietnamese peasants have built up and reinforced a great complex network of dikes which hold back the torrential water of the rivers flowing down from the mountains in summer during the monsoon seasons? Without these dikes 15 million people's lives would be endangered, and would die by drowning and by starvation. Anthony Lewis from the New York TIMES wrote an article just before I left the U.S. in which he said that successive U.S. administrations had rejected the idea of bombing the dikes in the Red River Delta, because they all felt the dikes are not entirely military targets and that this was the type of terrorist tactic that is unworthy of American people and American flags. But today, as you know better than I, American Phantom jets are bombing strategic points in the dike networks in this area.

I (implore) you, I beg you to consider what you are doing. In the area where I went yesterday it was easy to see that there are no military targets, there is no important highway, there is no communication network, there is no heavy industry. These are peasants. They grow rice and they rear pigs.

They are similar to the farmers in the midwest many years ago in the U.S. Perhaps your grandmothers and grandfathers would not be so different from these peasants. They are happy people, peace-loving people. When I went by walking on the way to the dikes to see the damage, would it be made enough I was an American and I was afraid of the reaction would be taken by the local people. [sentence as received] But they looked at me curiously and I saw no hostility in their eyes. I looked very carefully. I thought curiously. I saw the women. They seemed to be asking themselves: What kind of people can Americans be, those who would drop all kinds of bombs, so carelessly on their innocent heads, destroying their villages and endangering the lives of these millions of people.

All of you in the cockpits of your planes, on the aircraft carriers, those who are loading the bombs, those who are repairing the planes, those who are working on the 7th Fleet, please think what you are doing.

Are these people your enemy? What will you say to your children years from now who may ask you why you fought the war? What words will you be able to say to them?

Hanoi in English to American Servicemen Involved in the Indochina War

[Text] Last week, actress Jane Fonda visited Hanoi's Bach Mai hospital which was seriously damaged by U.S. bombs during a recent air raid. After the visit she had this to talk to American servicemen still involved in the Vietnam war. [Follows recorded female voice with American accent]

This is Jane Fonda speaking from Hanoi, and I'm speaking particularly to the U.S. servicemen who are stationed on the aircraft carriers in the Gulf of Tonkin, in the 7th Fleet, in the Anglo Corps in the south of Vietnam.

You are very far away, perhaps, and removed from the country that you're being ordered to shoot shells at and bomb. And so it's perhaps very hard for you to, to understand in concrete human terms what the effects of, of these bombs and these shells are having.

I'm sure if you knew what was inside the shells that you're dropping, you would ask yourself as, as I have been doing for the last few days since I have seen the victims: What do the men who work for Honeywell and the other companies in the United States that invent and, and, and make these weapons--what do they think in the morning, at breakfast? What do they dream about when they sleep at night?

Yesterday, I went through the war museum in Hanoi, where there is a display of all the different kinds of antipersonnel weapons the different kinds of bombs, the guava bomb, the pineapple bomb, the spider bomb, different kinds of shells that contain toxic chemicals, the new kinds of napalm, combinations of napalm and phosphorus and thermite. The list is endless as are the, the victims from these weapons. And, it absolutely amazed me, the length to which man's mind--or at least some men in the United States--their minds have gone to create new ways of killing people. They must want to die very much themselves to think this much about new ways of killing people.

I don't know what your officers tell you that you are dropping on this country. I don't know what your officers tell you, you are loading, those of you who load the bombs on the planes. But, one thing that you should know is that these weapons are illegal and that's not, that's not just rhetoric. They are outlawed, these kind of weapons, by several conventions of which the United States was a signatory--two Hague conventions. And the use of these bombs or the condoning the use of these bombs makes one a war criminal.

The men who are ordering you to use these weapons are war criminals according to international law, and in, in the past, in Germany and in Japan, men who were guilty of these kind of crimes were tried and executed.

Now I know that you are not told these kind of things, but, you know, history changes. We've witnessed incredible changes for example in the United States in the last 5 years. The astounding victory that has just been won by George McGovern, for example, who, who was nominated by the Democratic Party, is an example of the kind of changes that are going on--an example of the overwhelming, overwhelming feeling in the United States among people to end the war. McGovern represents all that is good to these people. He represents an end to the war, an end to the bombing.

The women and the mothers in the United States are weeping for the damage and death and destruction that is being caused to the mothers of Vietnam. Very soon, very soon even the people in the United States who have not yet spoken out will be admitting that this war is the most terrible crime that has ever been created against humanity.

It may be very difficult for you who have been asked to fight it to, to think about the war in a new kind of way, to not think about it in an abstract way, to not think about it as some, sole land down there underneath your planes or beyond the sight of your guns, that is just sand or rubble or trees with a lot of gooks or Charlies or whatever you've been taught to call the people who live here.

This is a country that is 4,000 years old. It is a very rich country, it has a rich culture, it has a rich, a rich growth. The trees are lush, the flowers are beautiful. I've been in many countries around the world, I have traveled widely, I've been very fortunate. Never in my life have I been in a country of people that are so loving, and so nonalienated. They are truly at peace with their land and with each other. What do you see in the streets? You see people holding hands, arms around each other, helping each other, talking to each other, hugging each other, working together in the fields. These are peasants. These are people who are used to being part of their land. Their clothes are stained with the land, their houses are made with land.

There's an expression that is used to describe Vietnamese women, which says: Feet in the dust and hands in the mud. And you see all these beautiful Vietnamese women leaning over in the rice fields, with their hands in the mud planting the rice. Their pagodas are made of mud.

And their land is being destroyed. Why? Certainly not for anything that is in your interests, the soldiers of the United States, or in the interests of any of the people in the United States except the very few people who are determined to prevent the nation of Vietnam from achieving freedom and independence.

How this came about is an astonishing thing. How it is that a country like the United States of America, which fought for its own freedom and independence, has become a nation which will deprive another nation of freedom and independence is something that we will all have to answer one day. We'll all have to find out how this came about. But right now, we must, we must stop, we must stop dropping these bombs on the people of Vietnam.

I visited a hospital today, the Bach Mai hospital. I saw a huge bomb crater in the center of the hospital. It was obviously dropped there on purpose. With the kind of bombs, the kind of techniques that have been developed now, you know, particularly you pilots know, that accidents like that don't happen. This was no accident. It destroyed wards filled with patients. It destroyed hospital equipment. It killed some doctors. It is a terrible thing to see what has been done.

Why? Why do you do this? Why do you follow orders telling you to destroy a hospital or bomb the schools. Do you know what happens to the women when the napalm that you're dropping lands on them? You have no idea. Deformed hands, necks twisted out of shape, women with five children who were working women who are used to working with their hands, who were lovely and alive and graceful--the way Vietnamese women are with the long black hair--twisted out of shape, not dead, not spared the pain and the misery of living as a mutilated person, forever in physical pain.

Why, why is this being done? The victims in the hospitals with thousands of holes in their body, from the steel pellets that are being dropped, and even worse now the Nixon administration has gone one step further from the Johnson administration--the steel pellets have been perfected, they're now plastic, rough-edged plastic. Why? Because plastic doesn't show up on X-ray's, which means that these people spend the rest of their lives with their bodies filled with plastic pellets and every time they move, it causes excruciating agony.

The women that I have talked to who were not even under your bombs but came to help victims of the chemical bombs, and the chemical toxic gasses were so strong that even after the bomb, long after the bomb had exploded when these women came to save the other people, they got sick. And, and weeks and months later they still--they pass out, they have headaches, they are losing their memory. Women who, who were pregnant are, are, are giving birth to deformed babies.

How can it be that the people of the United States have caused this kind of terrible, terrible suffering on a nation so far away? On a nation that has caused us no harm? I mean, what do you think? That the Vietnamese people are going to row across the Pacific in canoes? So I ask you and I will continue to ask you as long as I am here and I ask you as an American and I ask you because I cry every night when I think of, of what these people are having to go through, and I cry every night, when I think of the danger that is being done to them because of the bombing of their dikes. And I say why? And I say that the time has come for us to stop it.
[recording ends]

That was American movie actress Jane Fonda addressing U.S. servicemen involved in the Indochina war.

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FURTHER REPORTS ON JANE FONDA'S ACTIVITIES IN DRV

Report on Nam Dinh Visit

Hanoi in English to Europe, Africa and the Middle East 2000 GMT 19 Jul 72 B

[Text] U.S. warplanes have conducted savage airstrikes on Nam Dinh, North Vietnam's third largest city. The effects bear an extermination character.

American actress Jane Fonda, now in North Vietnam, on ~~July 16~~ visited the bombed city. Follows her address to American servicemen involved in the Vietnam war after visiting Nam Dinh: [follows recorded female voice with American accent]

I was taken to all parts of the city. I saw with my own eyes that in this city which is the textile capital of Vietnam, there are no military targets.

I saw for example, on Hang Tien Street, bombed on the 23d of June, huge bomb craters which had destroyed houses in this very populated residential section of town. There were two women who were picking through the rubble left by the bombs and they came over and spoke to me. One of the women said that she'd been at the market when the bomb fell on the top of her house. Her house has been turned into a huge bomb crater. Her husband and three children were all killed. Her oldest son was 25 years old, her next oldest son had been 22, and her youngest son was 18. Three families in this area were entirely destroyed by the bombs.

As I walked through the streets, beautiful Vietnamese girls looked at me through the doors and returned my smile. Their eyes seemed to be questioning: How is it that the Americans can do this to our city? We have done nothing to them.

I saw a secondary school where 600 students from 5th to 7th grade had been in class. The school had been hit by two bombs. I saw the center of a Chinese residential district, bombed--three places--houses razed to the ground.

The number 1 hospital of the city which had had 200 beds and it treated people from all over the city, large parts of it had been completely destroyed, particularly the pediat--pediatrics department and the supply dep--er--department where the medicines had been kept.

The large factory, the textile factories of Nam Dinh, in charred ruins. No one isn't [as heard] allowed to go in there because there are delayed reaction bombs.

I went to the dike, the dike system of the city of Nam Dinh. Just this morning at 4 o'clock it was bombed again, and I was told that an hour after we left the city, planes came back and rebombed Nam Dinh. The dike in many places has been out in half and there are huge fissures running across the top of it.

Again, I am talking about these things and I am describing to you what I am seeing on the ground because I think that you must not understand that the destruction is being caused to civilian populations and residential areas, to cultural centers. I saw the pagodas bombed in Nam Dinh. The area in which there are theaters where people come to rest, the recreation centers were all destroyed in Nam Dinh.

What are your commanders telling you? How are they justifying this to you? Have you any idea what your bombs are doing when you pull the levers and push the buttons?

Some day we're going to have to answer to our children for this war. Some day we are going to have to explain to the rest of the world how it is that we caused this type of suffering and death and destruction to a people who--who have done us no harm. Perhaps we should start to do it now before it is, too late.

Perhaps, however, the most important thing that has to be said about Vietnam is that despite all that Nixon is doing here and that Johnson has done before him, despite all the bombs, the people are more determined than ever to fight.

Take Nam Dinh for example. There are people who are still living in Nam Dinh. The factories have been dispersed and they are still working. There is still electricity. People are going about their business.

Perhaps the most important thing that can be said about Vietnam at this time is that in spite of, or perhaps because of, the bombs and the destruction that has been caused by the Nixon administration and was caused by the Johnson administration before him (?to) Vietnam, the resistance and the determination to resist has spread to every district, to every village, to every hamlet, to every house and to every Vietnamese heart.

This is very important to understand. Every man, woman and child in this country has a determination like a bright flame, burying them, strengthening their determination to go forward, to fight for freedom and independence.

And what interests me so much is that as an American, is that this is so much like the essence of the American people. The one unifying quality I believe about the American people, the common denominator that we all share, is the love for freedom and democracy. The problem is that the definition of, of freedom and democracy has been distorted for us and we have to redefine what that means. But the Vietnamese who have been fighting for 4,000 years know very well.

And as in Nam Dinh for example, all the rubble and all of the destruction has not stopped them. It is fascinating to see. There are people still living there, there is still electricity in the city. The factories have been dispersed, but it is still working. The textiles are still being produced. Families are still producing food for a (?certainty). They are still going to the markets, and they are still ready to pick up a gun if necessary and defend their homes and their land. [recording ends]

That was Jane Fonda's address to American servicemen involved in the Vietnam war after visiting U.S. bombed city of Nam Dinh.

Fonda on Quang Tri Liberation

Hanoi Domestic Service in Vietnamese [REDACTED] 3

[Statement by actress Jane Fonda; first few words in English, fading into Vietnamese translation--recorded]

[Text] I am Jane Fonda. I am in Hanoi. All of us know that you, Vietnamese friends, are fighting for the just cause and the truth. Therefore, you do not have to bomb or imprison the people.

You friends might wonder why after waging the special war of [words indistinct] after the United States introduced a million U.S. infantry troops into Vietnam and after carrying out the Vietnamization program, all these strategies have failed. These strategies might be changed, but they have only been aimed at supporting the policy of turning South Vietnam into a U.S. neocolony. Why is Nixon, while speaking of peace and ending the war, sending many more U.S. aircraft to Vietnam and bombing on a scale unprecedentedly massive in the history of war? Because Nixon is trying to check the people's war of the Vietnamese people, 90 percent of whom are peasants, who are intent on regaining power, determining their own destiny, acquiring land and plowing and transplanting for themselves.

The situation in Quang Tri is very interesting. When the liberation troops entered Quang Tri and, in coordination with the peasants, liberated this province, all the people in the province arose like birds breaking out of their cages, as pointed out by a journalist back from Quang Tri. Why did the people arise? Why were they capable of defeating all the army units Thieu sent to Quang Tri? Why can they continue to fight despite the bombs and shells falling on their heads? Because they are free. Because they are fighting for freedom and are protecting their 4,000-year history and their future. They are protecting the sacrifices and the blood shed by their ancestors as well as their parents, children, brothers and sisters.

They have set up an administration. It is very interesting to note that some former members of the puppet army are participating in this administration. Many former members of the puppet administration in Quang Tri Province have now been elected by the people to the newly formed people's committees. Why is that? Because the people know that these persons did not betray them and did little harm to them. These persons previously were coerced or bribed by the Saigon administration.

Therefore, we find here an inspiring practical example of concord, a model of the tolerance of the Vietnamese people and a concrete example proving that one of the seven points set forth by the PRGRSV has been realized, whereby the revolutionary forces, various political and religious tendencies, neutralists and members of the present Saigon administration can cooperate with one another as Vietnamese patriots standing for their country's independence, freedom and democracy.

We Americans can also appreciate this because one of the revolutionary slogans adopted by patriot Patrick Henry was "liberty or death." This slogan is not very different from President Ho Chi Minh's "Nothing is more valuable than independence and freedom" slogan.

Press Conference

V Hanoi Domestic Service in Vietnamese [REDACTED]

[Recorded reportage]

[Text] On the evening of [REDACTED] artist Jane Fonda, a well-known American pacifist visiting the northern part of our country, held a press conference at the Hanoi International Club. Attending were many domestic and foreign journalists.

In her opening statement Jane Fonda pointed out the following reasons for her current visit to our country: To discover the truth about the bombing the Nixon administration is trying to deny before the U.S. public and to discover facts about our country's overall situation that is being slanderously distorted by many American newspapers.

She gave a detailed account of what she had seen and heard while visiting hospitals, schools, factories, dikes and dams, cities and villages which were destroyed by U.S. bombs and shells and where definitely no military targets were found. She recalled the very emotional contacts she had with many of our people of various strata.

Recalling her visit to seven U.S. aggressor pilots detained in the north, she said all of them were healthy and repentant and hoped that the Vietnam war would soon end.

Artist Jane Fonda laid special emphasis on the undeniable crimes of the Nixon administration, which bombed and strafed dikes and dams.

Sister Fonda indignantly said: [first two sentences in English, fading into Vietnamese translation--recording] Melvin Laird the other day said that bombing of dikes may be taking place, but it is accidental and it only happens if there is a military target on top of the dike. Does he really take the Vietnamese to be foolish enough to put a military installation on top of a dike? Why did Mr Laird say that the United States might have accidentally bombed Vietnamese dikes, dams and sluices while the Pentagon was ballyhooing the "accuracy" and "smartness" of U.S. bombs?

She stressed the need to condemn the Nixon administration's bombing of dikes and dams because it is fraught with the danger of causing losses which may last for decades for the Vietnamese people.

She continued: [first few words in English, fading into Vietnamese translation--recorded] I believe that vicious Nixon knows what he is doing. By bombing the dikes and dams that have been built and protected for thousands of years Nixon has struck at the foundation of the Vietnamese nation. Nixon is trying to defend himself, but he has no right to bomb the DRV. He has violated the 1954 Geneva agreements and the commitment made in 1968 to stop bombing the north.

After analytically pointing out that Nixon's present war escalation originated in his setbacks in South Vietnam, sister Fonda said: [first few words in English, fading into Vietnamese translation--recording] The Vietnamese people have a 4,000-year history. These 4,000 years have readied the Vietnamese people to handle any action taken by Nixon. I have the impression that the Vietnamese people are struggling for their fallen heroes and heroines, for their 4,000-year history and for their future generations. What I have learned here and which I will never forget is that Vietnam is one nation, one country.

Refuting many of Nixon's fallacious allegations about the Vietnam problem, especially the claim that the north is aggressing against the south, sister Fonda stressed: [first few words in English, fading into Vietnamese translation--recording] Nixon cannot end the war if he insistently demands that the political issue be separated from the military issue. There is only one way to end the war: to seriously respond to the PRGRSV's seven-point proposal, which is the most fair, sensible, reasonable and humanitarian proposal. The United States must set a deadline for withdrawing all its military forces from South Vietnam and must cease its support for the Nguyen Van Thieu regime.

Jane Fonda answered many questions by domestic and foreign journalists. Answering a foreign journalist's question on the significance of the Democratic Party's nomination of Senator McGovern as the Democratic presidential candidate, sister Fonda said: The American people are fed up with the Vietnam war, which is radically dividing the United States. Senator McGovern is a symbol of change, of a way out. Many rapid changes have taken place in the United States.

In answer to a question about the fact that some American warlike elements are threatening to take legal action against her for treason, sister Fonda said: I think we must see who the traitor. I want to publicly accuse Nixon here of being a new-type Hitler whose crimes are being unveiled. I want to publicly charge that while waging the war of aggression in Vietnam he has betrayed everything the American people have at heart. The tragedy is for the United States and not for the Vietnamese people because the Vietnamese people will soon regain their independence and freedom.

But I am afraid that it will take the American people years to wipe out the crimes that Nixon is committing in the name of the United States.

Asked about the most profound impression she had during her Vietnam visit, Jane Fonda answered with a sincere, emotional tone: [1 minute in English, fading into Vietnamese translation--recording] I have many profound impressions, but I will only speak of this morning. This morning while I was sitting in the shadow of the temple of literature in Hanoi the alert sounded. But I was watching the second act of a play by American playwright Arthur Miller. The performers had just come back from the front. This alone proves that the Vietnamese people will win.

Message to U.S. Pilots

Hanoi in English to Southeast Asia ~~2000-000-01-101-72-B~~

[Text] Now here is a recorded message from actress Jane Fonda to U.S. pilots involved in the Vietnam war: [follows recorded female voice with American accent]

This is Jane Fonda. I have come to North Vietnam to bear witness to the damage being done to the Vietnamese land and to Vietnamese lives.

Just like the Thieu regime in Saigon which is sending its ARVN soldiers recklessly into dangerous positions for fear that it will be replaced by the U.S. Government if it fails to score some strategic military gains, so Nixon is continuing to risk your lives and the lives of the American prisoners of war under the bomb in a last desperate gamble to keep his office come November. How does it feel to be used as pawns? You may be shot down, you may perhaps even be killed, but for what, and for whom?

Eighty percent of the American people, according to a recent poll, have stopped believing in the war and think we should get out, think we should bring all of you home. The people back home are crying for you. We are afraid of what, what must be happening to you as human beings. For it isn't possible to destroy, to receive salary for pushing buttons and pulling levers that are dropping illegal bombs on innocent people, without having that damage your own souls.

Tonight when you are alone, ask yourselves: What are you doing? Accept no ready answers fed to you by rote from basic training on up, but as men, as human beings, can you justify what you are doing? Do you know why you are flying these missions, collecting extra combat pay on Sunday?

The people beneath your planes have done us no harm. They want to live in peace; they want to rebuild their country. They cannot understand what kind of people could fly over their heads and drop bombs on them. Did you know that the antipersonnel bombs that are thrown from some of your planes were outlawed by the Hague Convention of 1907, of which the United States was a signatory? I think that if you knew what these bombs were doing, you would get very angry at the men who invented them. They cannot destroy bridges or factories. They cannot pierce steel or cement. Their only target is unprotected human flesh. The pellet bombs now contain rough-edged plastic pellets and your bosses, whose minds think in terms of statistics not human lives, are proud of this new perfection. The plastic pellets don't show up on X-rays and cannot be removed. The hospitals here are filled with babies and women and old people who will live for the rest of their lives in agony with these pellets embedded in them.

Can we fight this kind of war and continue to call ourselves Americans? Are these people so different from our own children, our mothers, or grandmothers? I don't think so, except that perhaps they have a surer sense of why they are living and for what they are willing to die.

I know that if you saw and if you knew the Vietnamese under peaceful conditions, you would hate the men who are sending you on bombing missions. I believe that in this age of remote-controlled push-button war, we must all try very, very hard to remain human beings. [recording ends]

4 Additional Message to Pilots

Hanoi in English to American Servicemen Involved in the Indochina War ~~2000-000-01-101-72-B~~

[Text] And here is movie actress Jane Fonda addressing U.S. flyers and airmen: [follows recorded female voice with American accent]

This is Jane Fonda in Hanoi. I'm speaking to the men in the cockpits of the Phantoms, in the B-52's, in the F-4's; those of you who are still here fighting the war, in the air, on the ground; the guys in the Anglico Corps, on the 7th Fleet, the Constellation, the Coral Sea, the Hancock, Ticonderoga, the Kitty Hawk, the Enterprise.

You know the war isn't winding down. You know this because you're fighting it. You know this because you are to bomb (?and you call them in). You direct your artillery. You pull the levers to release the bombs. You know the tonnage and the damage. You can see the hospitals and churches in residential areas in smoke and ruin.

So you know that when Nixon says the war is winding down that he's lying; that he has simply changed his tactics. He thinks that he can get away with it, because he believes that we have no conscience; that if he reduces the American casualties but kills more Vietnamese people that we the American people won't care.

But I think he has a very low opinion of the American people. And I think it's a shame that the United States of America is being governed by a person who thinks this way about us. He defies our flag and all that it stands for in the eyes of the entire world.

All of you in your (?heart of hearts) know the lies. You know the cheating on the body counts, the falsified battle reports, and the number of planes that are shot down and what your targets really are. Knowing who was doing the lying, should you then allow these same people and same liars to define for you who your enemy is. Shouldn't we then, shouldn't we all examine the reasons that have been given to us to justify the murder that you are being paid to commit?

If they told you the truth, you wouldn't fight, you wouldn't kill. You were not born and brought up by your mothers to be killers. So you have been--you have been told lies so that it would be possible for you to kill. [recording ends]

That was Jane Fonda speaking to U.S. pilots and airmen.

✓ Talk on Geneva Accords

Hanoi in English to American Servicemen Involved in the Indochina War [REDACTED]

[Text] Now listen to the movie actress, Jane Fonda, addressing the GI's on the occasion of the 18th anniversary of the signing of the Geneva accords: [follows recorded female voice with American accent]

This is Jane Fonda speaking from Hanoi on the occasion of the 18th anniversary of the signing of the Geneva accords. And one again I'm addressing myself to the U.S. men who are--who have been sent here to fight, as well, as well as to myself, because I think that we, we have to remind ourselves a little bit about the history of the U.S. involvement in the war. It's, it's, umm, something that's been kept from us, and it's really important that we understand, uhh, what our history here has been.

During the French Indochina war, during the time when Roosevelt was president of the United States, he, Roosevelt, hadn't made up his mind what the approach of the United States was going to be to the French involvement in Indochina. But after Roosevelt came Harry Truman, and Truman decided that he was going to take the side of the French, support the French against the Vietnamese people. And Eisenhower, who became president after Truman, followed a policy that Truman had already started. Only he went a little bit further, and by 1953, under the Eisenhower administration, the United States was financing 85 percent of the French war against the Vietnamese people.

Think of what that means in terms of taxes that our parents were paying in the United States, quite unbeknownst to them--the taxes that our parents were having to pay in order to finance, to buy weapons for the French to kill the Vietnamese people.

In 1954, the liberation forces of Vietnam defeated the French colonial army at Dien Bien Phu in an historical battle. Following this victory, there was the Geneva conference and the accords were drawn up, the Geneva accords. The two principal points of the accords called for a temporary division of Vietnam into two military regroupment zones, two regroupment zones, separating Vietnam into, temporarily into, a northern part and a southern part. Two years after the Geneva accords, that is to say in 1956, there was to be a general election. It was to be a general election held in which the people of Vietnam, from the north and the south, would elect their president and reunify their country.

However, in 1956 Eisenhower noted publicly that if the elections were held, Ho Chi Minh would have been elected president of Vietnam by 80 percent of the votes, by 80 percent of the people in Vietnam. And this was something that the United States didn't want. And so, a man by the name of Ngo Dinh Diem was installed as president of South Vietnam. Now, this act, which has been very thoroughly documented in the Pentagon papers--and I think we should all read those papers, at least the condensed version of them, very attentively--it clearly shows that this was an act caused by the United States.

A quote from the Pentagon papers says: South Vietnam is essentially the creation of the United States. And that's a very important thing to keep in mind when our government tells us that there is an invasion from the north. We must remember, that there wouldn't be a north if it were not for the fact that, that the U.S. Government had violated the Geneva accords, that Vietnam is in fact one country, with one language, with one history of struggle, with one culture. There are no words in the Vietnamese language for North Vietnam or South Vietnam in fact.

President Kennedy once again violated the Geneva accords when he set up the Military Assistance Advisory Group, or better known as MAAG, which supplied the Diem regime in Saigon with arms and military advisers. One of the stipulations in the Geneva accord was that there were to be no military personnel or advisers or arms sent into Vietnam.

There came a time in the beginning of the 60's when (it) became very apparent that the people of Vietnam hated the Diem regime. The Buddhists began to uprise, uhh, and uhh, at that time it became impossible to hide the fact that Diem was, uhh, was in fact installed by the United States, that he did not represent the people of Vietnam--no more than, than Thieu does today--and it became necessary to replace him.

And once again if we turn to the--to the Pentagon papers, that is to say the documents that come from the United States Government, written by our leaders of that time, we see that there was a military coup, uhh, with CIA complicity, which removed Diem, uhh, from office.

And then we come to President Johnson, and once again we have to turn to the Pentagon papers, uhh, and it's very interesting when you read about the so-called Tonkin Gulf incident. You will find that it is a slight fabrication. This, this incident, which was used to justify our bombing of the Democratic Republic of North Vietnam, this was the point of course at which the United States sent, uhh, U.S. forces openly and in unit strength to Vietnam.

Now, as Americans we should, we should appreciate, deeply appreciate, and understand the struggle (?that the) Vietnamese people are, are fighting because we live in a country, we come from a country of, uhh, which has fought a war of, of independence, and we shed much blood and there was much sorrow over the losses from our war of, uhh, our, our revolution, the American revolution, which we fought against the British, and we won despite the fact that our, our soldiers were, were less professional, had le--had less weapons. We won because we knew why we were fighting, because we were fighting for freedom and independence. And in that kind of a fight, there can be no compromise.

Now that is what the Vietnamese are fi--are fighting; they're fighting for freedom. That is all they're asking for.

There is an invasion taking place. It's taking place from the 7th Fleet, from the aircraft carriers, from Thailand, from Guam, but essentially from the Pentagon and from the White House.

You men, it is not your fault. It is in fact tragic to think how you are being so cynically used because the time is coming very soon, it is already half-way there, when people are admitting openly that this is one of the most horrible crimes ever committed by one nation against another.

(?Earlier) there was a time when Russia was, was the big monster. That was the excuse that we used uhh, in the United States to build up, uhh in, during the cold war to build up, umm, our military strength and, and develop nuclear weapons and terrible, uhh, arsenal of, of, of death.

But what is the situation today? Today we have business men from the United States going to Russia and doing business. We have uhh, uhh, you know our, our government leaders going to Russia. We have the, uhh, you know a peaceful coa--coalition, coexistence with Russia.

Then (?it was) China which became the big, uhh, the big threat; that China was going to suddenly come across the Pacific Ocean and attack us. Uhh, and what is the situation today? We have diplomats going to China. We have trade going on with China. Every day in the United States there are articles talking about, about the, uhh, the beneficial effects of the Cultural Revolution in China--when all these [words indistinct] of the United States--how the peasants are living better, how famine's been wiped out, how illiteracy and prostitution has been wiped out.

(?And then) Vietnam, this tiny little country--but you see what's happening in the United States is that even the men who at one time were planning and plotting the war are admitting openly to the American public that this is a crime.

Former Secretary of Defense under the Johnson administration Clark Clifford, just the other day, in the--in the, uhh, in the United States condemned the war in Vietnam. The former negotiator in Paris, Averell Harriman, recently admitted in a--in an interview with the Washington POST that Nixon is sabotaging the Paris peace talks, that a solution to the war does exist which would bring all of you home and release the prisoners of war. This solution is the seven-point solution for peact put forward by the Provisional Revolutionary Government in Paris.

Now, I'm saying this because I think it would be very sad for any of you to be killed for a war that very soon even, even the diehards in America are going to have to admit is, ahh, is, ahh, is, is, is, is truly criminal. I think that it would be very sad to go on killing innocent civilians--women, old people, and children--for a war that, ah, that is, is, uhh, that is being criticized all around the world. [recording ends]

That was Jane Fonda speaking to GI's in South Vietnam. More messages of her will come to you soon.

Meets Nguyen Duy Trinh, Departs

Hanoi VNA International Services in English ~~0557~~ GMT 22 Jul 72 B

[Text] Hanoi VNA July 22--American actress Jane Fonda ~~yesterday~~ paid a visit to Vice Premier Nguyen Duy Trinh who had a cordial talk with her and inquired about her health and her family.

Jane Fonda told the vice premier of her impressions during her visit to Vietnam. She said she had witnessed U.S. crimes in Hanoi capital, Hai Hung, Ha Tay and Nam Ha provinces and was deeply impressed by the Vietnamese people's solidarity and mutual sympathy and their determination to materialize President Ho Chi Minh's testament and bring the anti-U.S. aggression for national salvation to complete victory.

Jane Fonda voiced her heartfelt thanks to the hospitable Vietnamese people who, she said, have made a clear distinction between the U.S. imperialists who are the aggressors and the American people who are friends of the Vietnamese people in the struggle for peace and democracy. She expressed her admiration for the age-old history and culture of the Vietnamese people and their creativeness and tenacity. She said she was convinced that under the wise leadership of the Vietnam Workers Party and the DRV Government the Vietnamese people will certainly win brilliant victory.

The American actress left for home ~~today~~.

Seeing her off at the airport were members of the Vietnam Committee of Solidarity With the American People and the Vietnam Film Artistes Association.

Hanoi in English to American Servicemen Involved in the Indochina War. 1300 GMT 24 Jul 72

[Text] Now let's listen to Jane Fonda speaking to U.S. pilots and airmen: [follows recorded female voice with American accent]

This is Jane Fonda in Hanoi. Yesterday July 13, I'm told that the record for B-52 bombing raids in Vietnam, [was set] and on July 14th, UPI, UNITED PRESS INTERNATIONAL, reported that in "Operation Linebacker" against North Vietnam in the first 99 days of the renewed air war in North Vietnam, U.S. bombers flew more than 20,300 raids. In each of these raids, an average of 2 tons of bombs were dropped on the country.

Now we know that B-52's are strategic bombers. These are planes that were built, invented to--in the event that a large country with its own air force and heavy arsenal of military weapons like Russia, uhh, would, uhh, need to be attacked. To use B-52's against the civilian population is like trying to kill a butterfly with a machinegun. It's barbaric.

I am assuming that because you are so far away from the land here, because you are on the ships, or because you are in Thailand, or because you are so high up in the sky that you can hardly see what it is you're bombing, that you don't really realize what the effect of these bombs is.

And I think, I--I think that--well, the other day, for example, someone told me that one of the pilots that was recent--recently shot down, uhh, near Hanoi, as he was, uhh, driven across the river, uhh, uhh, he was, he was, uhh, being being rescued by, uhh, the people and he was shown a bridge and the people said, uhh, that bridge was, uhh, bombed, uhh, recently. And he said: Well, my parents are rich. Uhh, we can buy you a new bridge, we can afford to build you a new bridge after the war. And the people said to him in Vietnamese and it was then translated by the interpreter, they said, but can your parents replace our, our children, our mothers, our wives who have been killed by your bombs? And the soldier hung his head and he said: I didn't think of that.

I've heard this from several of the, uhh, pilots--I didn't think of that. I think we have to start thinking about it. I think we have to start thinking about the incendiary bombs that are being dropped. These bombs asphyxiate people to death, people who are in the shelters. Now, who goes into shelters? The women, the old people, and the children--they're suffocating to death. They're being burned in ways that is beyond the imagination, and I think we have to think about that.

What are you being told by your commanders? Are you being told that you're bombing to help the people? To save the country for democracy? What kind of democracy? Fifty thousand American lives have been lost here for a one-man election. Is that a democracy? What kind of democracy when just after the last one-man election, the Thieu regime in the south passed new economic reforms which were planned and set up by the United States.

And what in fact do these reforms do? They benefit the U.S. businessman. They give him tax-exempt go-ahead to make the most incredible kind of profits in South Vietnam. He will not have to pay taxes, the rich men in America. They will not have to pay taxes on the fortunes that they are making, off the riches in South Vietnam.

And this country is a rich country--the soil is rich, the growth is rich, the tin, the tungsten, the rubber, the lumber. Eisenhower knew it well, that why he said it was necessary for us to finance 85 percent of the French, the French-Indochina war against the Vietnamese people. The people in the Pentagon knew it. The Mekong Delta is called one of the richest pieces of real estate in Asia.

But what does this have to do with you? What does this have to do with the masses of people in America? It is not to our interest. In fact, it is quite the contrary. You know that there is rising unemployment in the United States. There is for the first time since 1893 a trade deficit, an imbalance of payments, inflation.

In fact, the war is falling on the backs of the working people of America. What are our corporate bosses doing? They are going into countries like Vietnam or trying to--they're going into the Philippines, into Brazil, into Okinawa, into other, what we call underdeveloped countries around the world, and they're setting up factories, factories which make component parts. One part will be made in the Philippines, another part will be made in Vietnam, another part will be made in--in Brazil. They would be assembled in Mexico and they'll be sold on the American market at American prices. But the American worker will not be given a job, and why are the bosses going elsewhere and why are they trying to go to Vietnam? Because the workers are paid from 40 to 90 percent less than the workers in the United States?

When you're on the ground in South Vietnam and you see the ESSO signs and the Shell signs and the Coca-Cola signs and the Hondas and the TV sets. And it is after all for that that you're fighting.

Is that worth risking your life for? Is that worth killing innocent people for? I think not. And in fact, what is the war doing? The war is only making the people of Vietnam understand who their enemy really is.

There was a time perhaps when a certain amount of the peasants were unclear. I don't really know because I have never spent enough time in Vietnam to really know that. But I do know now because I've talked to many, many, many people of all kinds in the area--the northern part of Vietnam. And I have spoken to many of the Vietnamese students in the United States. And I know that they say that because of the incredible killing and slaughter and the number of bombs that are falling on the people of Vietnam, they now know very clearly who their enemy is.

And their enemy is not--are not people from another part of their own country who are coming down to help them fight. The enemy to them are the people who are sending the planes to drop bombs on them. These people are--are, as I'm sure you know, their [as heard] 80, 80 percent of the people in Vietnam are peasants.

They live in their land. It is part of them and their land is being destroyed and so they will fight, and they will fight to the end. And this is not--these are not easy, empty words. When it comes to national freedom and independence, you can make no compromise. Like in--like in loving, if you love a woman, you don't compromise, you either love her or don't love her.

For the United States of America, if our country was attacked, we wouldn't compromise, we would fight to the end.

Well, the Vietnamese people will fight to the end, and their determination is something incredibly beautiful to see. Despite all of the suffering, despite the tears that have been shed, there is much determination. They are continuing, as I'm sure you know, in the battlefields of the south, they are winning.

The Thieu regime has not taken back one inch of liberated territory despite all his promises. He has sent his two elite elements of his two best divisions into the Quang Tri area, and they are being decimated--the paratroopers and the marines--they are scared. Nixon and Thieu are scared. And that's why they are sending some of the--of their--of their ARVN soldiers into incredibly dangerous situations.

So I think that--that maybe American people have to begin to see clearly who is fighting who and for what, and should we be fighting on the side of the people who are, who are murdering innocent people, should we be trying to defend a government in Saigon which is putting in jail tens of thousands of people into the tiger cages, beating them, torturing them--I have met some of these victims and it is a horrible thing to see.

And I don't think as Americans, we who come from a country which was founded on freedom, independence, and democracy, that we should be risking our lives or fighting to defend that kind of government. [recording ends]

You have just listened to Jan Fonda's address to American pilots and airmen.

HANOI PRECAST: ADDITIONAL INFO: 1008-MS

Talk to U.S. Pilots

Hanoi in English to American Servicemen Involved in the Indochina War 1300 GMT 25-Jul-68

[Text] Now listen to Jane Fonda's recorded talk to U.S. pilots and airmen during her recent visit to Hanoi. [follows recorded female voice with American accent]

Perhaps it would be a good thing if all of us knew something about the country that we are fighting against and the country that you are dropping your bombs on. Vietnam is a very old country--3,000 years before Christ was born the Vietnamese people fought against the Chinese feudal lords who had taken the land away from the peasants. In 40 AD the first insurrection occurred among the Vietnamese people to get the Chinese lords out of their land and win back freedom and independence. This insurrection was lead by two sisters, Trung Hi and Trung Trac.

The Vietnamese people have--have fought against many outside aggressors. For example, the Mongolian Army, lead by Ghenghis Khan, 500,000 profess--professional trained soldiers who had swept through Europe and Asia, who had conquered half of the world, arrived in Vietnam and were stopped by the Vietnamese peasants. After the--after the Vietnamese people defeated the Mongolian Army, they gave them the ships--Vietnam--Vietnamese ships, to take the Mongolian Army back to where they came from. The Vietnamese people have fought against the Chinese, have fought against the Japanese, and have fought against the French.

They defeated the French colonial army at the battle of Dien Bien Phu in 1954, and it was after that battle that the Geneva accords were signed. These accords said that Vietnam would be temporarily divided into two parts--into two regroupment zones, but that this division was only to be a temporary one, and that Vietnam was to be reunited in 1956, by general elections. Dwight D. Eisenhower was president of the United States at that time, and he admitted that if elections had been held as they were supposed to be according to the Geneva accords, President Ho Chi Minh would have been elected president of the reunited Vietnam by 80 percent of the votes.

The United States did not want Ho Chi Minh to be president of Vietnam although this is what 80 percent of the Vietnamese people wanted, and so, as has been proven by the Pentagon papers, the CIA organized a military coup which overthrew [pause] which prevented elections, and installed a puppet government under Ngo Dinh Diem.

The Diem regime was no different than the Thieu regime of today. It is a regime which is kept in power because of American money and American technology against the wishes of the Vietnamese people. You are told many other things, perhaps, by the United States Government, but anyone who has been here and talked to the people, knows that the Vietnamese people do not like Thieu, they do not--not like the fact that he is arresting tens of thousands of people, like yourselves, young people in the streets of South Vietnam who are speaking out against the war and demanding peace.

These people are being put into prison, they are being beaten, they are being tortured. The economy of their country is being ruined by the corrupt government in the south and by the presence of the U.S. military.

You must understand that the people of Vietnam are peasants. They live with the land--the land is a part of their lives, as it has been for thousands of years. Every time you drop your bombs on the heads of these peasants it becomes clearer to them--to them who the enemy is. How could they possibly be asking for help from a country which is destroying their land, their crops, killing their people, mutilating their babies. How can we continue to rain this kind of terror on these people who want nothing more than to live in peace and freedom and independence.

All American people who consider themselves patriotic must begin to ask themselves some serious questions about what we are doing in Vietnam. We must stop thinking that we have to follow orders like robots. Let us stop being robots. [recording ends]

Talk With Saigon Students

Hanoi in English to American Servicemen Involved in the Indochina War ~~SECRET~~

26 Jul 72 B1

[Text] Now listen to Jane Fonda's recorded talk with Saigon students: [follows recorded female voice with American accent]

This is Jane Fonda in Hanoi. I am very honored to be a guest in your country, and I loudly condemn the crimes that have been committed by the U.S. Government in the name of the American people against your country.

A growing number of people in the United States not only demand an end to the war, an end to the bombing, a withdrawal of all--all U.S. troops and an end to the support of the Thieu clique, but we identify with the struggle of your people. We have understood that we have a common enemy--U.S. imperialism. We have understood that we have a common struggle and that your victory will be the victory of the American people and all peace-loving people around the world. Your struggle and your courage in the face of the most unbelievable hardships has inspired all of us in the deepest part of our hearts. We follow very closely the crimes that are being committed against you by the Thieu regime; the people, the brave people who are speaking out for peace and independence, who are being put away into prisons, in the--in the tiger cages.

We have come to know something about your country because in the United States there are students from the southern part of Vietnam, from Saigon, from Hue, from Da Nang. They have taken a very active stand against the war, and they are speaking out loudly to the American people and explaining to us that Vietnam is one country with one culture and one historic struggle and one language.

As a result of their protest against the war, the repression of the U.S. Government and the Saigon clique is coming down on their heads as well. For example, in the first week of June, four of the students received letters from the U.S. State Department saying that their AID scholarships had been terminated as of June 1, and that tickets were waiting for them to take them back to Saigon on orders of the Thieu regime. Among these four students was Nguyen Thai Binh.

We condemn the murder of Nguyen Thai Binh who wanted to do nothing more than to return to his people and fight for freedom and independence for his country. We are investigating this murder and we will do everything we can so that the people responsible for it will be brought to justice.

The Vietnamese students in the United States are very homesick.

They call themselves the orphans of Vietnam and they are longing for the day when they can return to--to Vietnam and live in a little house in the countryside and raise chickens. This is what they've told us. For the time being, however, they feel that their duty is to remain in the United States and do their political work among the American people.

As an American woman I would like to tell you that the forces that you are fighting against go far beyond the bombs and the technology. In our country people are very unhappy. People have no reason for living. They are very alienated from their work, from each other and from history and culture. We have discovered, especially the young people in the United States, that a society of luxury and wealth is not the answer to peace and happiness.

Your leading poet To Huu described the cancer of cons--of the consumer society as the poisoning of people's souls. We have followed closely the encroachment of the American cancer in the southern part of your country, especially around Saigon. And we hope very soon that, working together, we can remove this cancer from your country so that the misery and unhappiness that has come to the American people very deep in their soul will not happen to the Vietnamese people. And we thank you for your brave and courageous and heroic fight.

Recently in the United States we've been doing a lot of political propaganda work among the students and the soldiers with your Vietnamese comrades. And they taught me a song that they tell me was written by students in the prisons who have been imprisoned by the Thieu regime in the south and I'd like to sing the song for you, and I--I--I ask your forgiveness for my accent. I--I hope that I'm not going to make any mistakes and say anything obscene. [short laugh, then singing in Vietnamese]

HANOI BROADCASTS ADDITIONAL ALLEGED JANE FONDA PROGRAMS

~~Message to Saigon Soldiers~~

Hanoi in English to Southeast Asia 1000 GMT 29 Jul 72 B

[Text] We now bring you a recorded speech to Saigonese troops by American actress Jane Fonda: [follows a recorded female voice with American accent]

This is Jane Fonda from Hanoi. I'm addressing myself to the ARVN soldiers.

Many people in the United States deplore what is being done to you. We understand that Nixon's aggression against Vietnam is a racist aggression, that the American war in Vietnam is a racist war, a white man's war--(which) was very clearly indicated when Ambassador to Saigon Elsworth Bunker described the Vietnamization program as changing the color of the corpses.

We deplore that you are being used as cannonfodder for U.S. imperialism. We've seen photographs of American bombs and antipersonnel weapons being dropped, wantonly, accidentally perhaps, on your heads, on the heads of your comrades. And we note with interest that (these) kind of accidents don't happen, at least not with as much frequency, to American soldiers, and we think this is an indication of the lack of concern that is being taken for your lives by the white American officers, both in Vietnam and in the Pentagon and in the White House--not to mention the officers in Saigon who have been bought off by the ruling class of the United States.

We've seen photographs of many of you clinging to the helicopters trying to escape from what you knew was a suicide mission. We understand that you have been pressganged, many of you, into the army because your land has been destroyed by American bombs, because there are no other jobs to be had in Saigon, perhaps because you have to support your family, because you will be the--you will be put in jail and beaten if you tried to avoid the draft.

We well understand the kind of situation that you are put in because American soldiers are in the same kind of situation, and we feel that--that you have much in common. You are being sent to fight a war that is not in your interests but is the interest of the small handful of people who have gotten rich and hope to get richer off this war and off the turning of your country into a neocolony of the United States.

We read with interest about the growing numbers of you who are understanding the truth and joining with your fellow countrymen to fight for freedom and independence and democracy. We note with interest, for example, that as in the case of the 56th Regiment of the 3d Division of the Saigon army, ARVN soldiers are taken into the ranks of the National Liberation Front, including officers who may retain their rank.

We think that this is an example of the fact that the democratic, peace-loving, patriotic Vietnamese people want to embrace all Vietnamese people in forgiveness, open their arms to all people who are willing to fight against the foreign invader.

We know what U.S. imperialism has done to our country in the United States, how it is affecting the working people of the United States and particularly the people of (?courage). And so we know what lies in store for any third world country that could have the misfortune of falling into the hands of a country such as the United States and becoming a colony. [pause]

We all are striving very hard, the peace loving people of the United States, to end this war as soon as possible so that you can all return to your families in the condition of freedom and independence. We understand that the only way to end the war is for the United States to withdraw all its troops, all its airplanes, its bombs, its generals, its CIA advisers and to stop the support of the Thieu regime in Saigon, this man who has defiled not only his own country but the United States. The support of such a criminal is a blight on the American (?society which will take a long time to erase). [recording ends]

You've just listened to a Jane Fonda recorded speech to Saigonese troops.

Hanoi in English to Europe, Africa and the Middle East 2000 GMT 28 Jul 72 B

[Text] We now bring you a recorded message by American actress Jane Fonda to U.S. servicemen in South Vietnam. [follows recorded female voice with American accent]

This is Jane Fonda speaking from Hanoi. I read in the paper yesterday that Melvin Laird has admitted that it is possible that the dikes in North Vietnam have been hit by American bombs. He goes on to say that--that this can happen when there are military installations on top of the dikes, military convoys or material on or near the dike.

As someone who has spent now 2 weeks in North Vietnam, who has travelled in the countryside, who has seen the dikes, I find this laughable. Does anyone really believe that the Vietnamese people would be foolish enough to drag military material, antiaircraft guns, through the rice fields where there are no roads, where it's difficult to even walk, and place them on top of the dikes, which are made of earth, thus attracting the bombs of the American planes? If you stand on top of any of the dikes in the Red River Delta, you can see around you for miles. It is flat land. It is rice land. It is very visible, very clear to anyone that there are no military installations whatsoever. There are no trucks. There are no convoys. There are no antiaircraft guns.

I have seen the dikes bombed. I have seen them cut in half. For miles around you can the rice paddies spread out, and suddenly right around the most strategic and vulnerable point of the dike system, the bomb craters begin--huge bomb craters, sometimes 10 meters across and 8 meters deep.

There are many kinds of bombs being dropped. Some of them are bombs that explode and--cut the dikes in half. Some of them, however, pierce the earth laterally. They are delayed explosion bombs which lie dormant underneath the dikes to explode later. Some of them are causing earthquakes which make deep fissures into the dike system, so that later when the heavy rains come, the dikes will break and the area will be flooded.

I make an urgent appeal for all people around the world. This is a very grave and a very serious situation. The season of heavy rains is soon to begin. The people of Vietnam have spent many thousands of years building their dike system. Since the Middle Ages the Red River Delta has been struggled against, just as the Vietnamese people have fought against foreign invading armies. They have struggled against nature and they have won back the Red River Delta. They have conquered the Red River. They have claimed the land as their own.

These dikes are made of earth. There is no way to convey the labor, the hundreds of people, whose labor goes into building these dikes. It takes many years to construct them, moving the earth, packing it in--packing it into place.

The dikes that are destroyed this year will take many years to be rebuilt because the earth has to become solidified in order to hold back the heavy waters during the--the heavy rain seasons. So the damage that is done this year by Nixon's strategic bombing of the dike system will endanger not only the lives and their crops of the people this year, but for many years to come. It may cause famine. It may cause epidemics.

There is only one way to stop Richard Nixon from committing mass genocide in the Democratic Republic of Vietnam, and that is for a mass protest all around the world of all peace-loving people to expose his crimes, to prevent him from following the people of the world into thinking that if there are floods this year it would be a natural disaster.

It is a very clever scheme that he is attempting to carry out. [words indistinct] in Vietnam to justify the floods if they happen. But since the revolution of 1945, when this country was mobilized and organized in such a way so that the dikes could be repaired and rebuilt and reinforced every year, there have been no disastrous floods. They have been minimized [words indistinct] fortified to such a degree that the terrible damages that were done in 1945 and 1946 have been prevented.

And I can tell you of someone who has witnessed this [words indistinct] that if this year this land is flooded the finger can be pointed at Richard Nixon. And I think--I think (?it's cited) by Professor Yves Lacoste of the University of Paris--who is a geographer and he has studied very carefully the situation here--the damage would be worse than if he had ordered the dropping of atomic bombs.

Just to give you one example of the kind of incredible lies that are being told by the spokesmen of the White House, on July 18, at least a dozen foreign correspondents went to the district of Nam Sach to witness the bombing that had taken place to the dike system on July 9. While they were there, U.S. planes dropped 28 bombs on the most strategic and vulnerable point on the dike system. The 12 correspondents were almost killed by these--by these bombs. And several days later word came from the White House that the bombing had never taken place. [recording ends]

That was American actress Jane Fonda speaking to U.S. servicemen in South Vietnam.

ADDRESS TO GI'S IN SOUTH VIETNAM ATTRIBUTED TO JANE FONDA

Hanoi in English to Europe, Africa and the Middle East 2000 GMT 20 Oct 73 2:1

[Text] We now bring you American Actress Jane Fonda's address to American GI's in South Vietnam [follows recorded female voice with American accent]:

This is Jane Fonda speaking from Hanoi. A phenomenon has been taking place in the United States called the GI movement.

In 1968 the situation in the American army was qualitatively changed. Prior to 1968, many of the soldiers--the grunts, the [word indistinct], the ground troops in South Vietnam--had believed what their officers and their generals had told them: that they were there to help the Vietnamese people, that large areas of Vietnam had been pacified, that the war was about to be won.

If you recall, at the end of 1967 General Westmoreland announced: We can now see the light at the end of the tunnel. And 2 months later the Tet offensive occurred. And the soldiers were forced to face certain facts. They realized that in order for the offensive to have taken place, it meant that the very people that they were told had been pacified were in fact part and parcel of the liberation fighters. It was these people who were helping the soldiers bring weapons into town, hidden into the laundry baskets and the--and the bunches of flowers. It was these people who were part of the struggle.

The men were attacked for the first time on their own American bases and they had to start asking themselves questions. And they began to realize that they had been lied to. And since these young men are no longer (?John Waynes)--they're not like their fathers in the Second World War--they began to say no: We no longer want to die for someone else's lies. We will no longer be wounded for a war that we do not understand and do not believe in.

In 1969-1970 the desertions in the American army tripled. The desertions of the U.S. soldiers almost equalled the desertions from the ARVN army, and in the United States we laughingly said it was the Vietnamization of the American army.

The new recruits sent to South Vietnam were separated from the guys who had been there for a while behind barbed wire so they wouldn't find out what had been going on. The men had to turn in their arms at night. Why? Because there were so many U.S. officers being killed. Fragg--the word fragging entered the English language. What it meant was that the soldiers would prefer to roll a fragmentation grenade under the tent flap of their officer, if he was a gung-ho officer who was going to send them out on a suicide mission, rather than go out and shoot people that they--that they did not feel were their enemy.

In America we do not condone the killing of American officers--we do not condone the killing of anyone--but we do support the soldiers who are beginning to think for themselves. I've spent 2 years working with the antiwar soldiers in the United States, in the Philippines, in Okinawa, and in Japan. I've seen the movement grow from a movement of individuals taking courageous action as individuals to thousands of soldiers taking collective action to voice their protest against the war--marching, demonstrating in uniform and holding up their ID cards, risking to--going to jail if necessary, jumping ship, the petition campaigns which started on the Constellation in San Diego and spread to the Coral Sea, the Ticonderoga, the Enterprise, the Hancock, the Kitty Hawk.

And word about the resistance within the American military has spread throughout the United States. There was a time when people in the peace movement thought that anyone in uniform, anyone who was coming over here to support the Thieu regime, must be the enemy. But we have realized that most of these young men were not fortunate enough to get draft deferments, were not privileged enough to have good lawyers or doctors [words indistinct]. These are the sons of the American working class. They're the sons of the hardhats. They're guys who came because they thought it was the thing to do, or because it was the only way they could get an education, or because it was the only way that they could learn a skill. They believed in the army, but when they were here, when they discovered that their officers were incompetent, usually drunk, when they discovered that the Vietnamese people had a fight that they believed in, that the Vietnamese people were fighting for much the same reason that we fought in the beginning of our own country, they began to ask themselves questions.

And one of the biggest things (?they began to think) about the U.S. Government and about the U.S. military in particular is that it doesn't allow people to think for themselves. It tries to turn us into robots. And the young people of America, and particularly the soldiers, are beginning to say: We don't want to be robots anymore; we will define for ourselves who our enemy is.

Perhaps the soldiers who have been the first to recognize the nature of the war in Vietnam are those soldiers who have suffered the most in the United States--the black soldiers, the brown soldiers, and the red and Asian soldiers.

Recently on a tour of the U.S. bases on the Pacific rim--in Okinawa, Japan and the Philippines--I had the chance to talk to a great many of these guys and they all expressed their recognition of the fact that this is a white man's war, a white businessman's war, that they don't feel it's their place to kill other people of color when at home they themselves are oppressed and prevented from determining their own lives.

Women in the military--those who are so often forgotten--have their own way of identifying with the Vietnamese struggle. I heard horrifying stories about the treatment of women in the U.S. military. So many women said to me that one of the first things that happens to them when they enter the service is that they are taken to see the company psychiatrist and they are given a little lecture which is made very clear to them that they are there to service the men. They are given birth control pills. This is a big shock to these girls who come into the service with all kinds of high ideals about what the army will do for them, and the kind of training that they will get.

This very powerful grassroots movement--the GI movement--is forging probably the most important link in the United States--the link between the white middle class peace movement and the working class. *These men who are coming back from Vietnam, their lives in fragments, are putting the pieces back together in a new kind of way with a new kind of understanding. And in doing so, as they go into the factories--those who are lucky enough to get jobs--or as they stand in--in the unemployment lines, they are beginning to change the political complexion of the American working class.

In California particularly--at least I can talk about California because that's where I'm from--the rank and file insurgency among the working class has augmented in the last 6 to 7 months (?steadily), and this is particularly due to speed up of mandatory overtime, peculiarly true in the major industries such as steel and auto. The young workers, particularly with the new consciousness, have become aware of the fact that they've been sold out by the national labor leadership and they're indicating that a new alliance may need to be formed between workers and students.

Like the soldiers on active duty, the thing that the young workers resent the most is the fact that--that their lives are being destroyed that they are alienated from their work, that they're treated like robots.

I think it's important that people in Vietnam as well as other parts of the world know this--that while America preaches prosperity, the workers of America are suffering more than ever before. The suicide rate among workers has risen more than ever before. They are beginning to realize that Nixon's economic reform is in fact falling on their back. [recording ends]

You have just listened to American Actress Jane Fonda's address to American GIs in South Vietnam.

ALLEGED JANE FONDA IMPRESSIONS OF TALK WITH U.S. POW'S

Hanoi in English to American Servicemen Involved in the Indochina War 1300 GMT
15 Aug 72 B

[Text] Here is Jane Fonda telling her impressions after meeting captured U.S. pilots in the Democratic Republic of Vietnam: [follows recorded female voice with American accent]

This is Jane Fonda speaking from Hanoi. Yesterday evening, July 19, I had the opportunity of meeting seven U.S. pilots. Some of them were shot down as long ago as 1968 and some of them had been shot down very recently. They are all in good health. We had a very long talk, a very open and casual talk. We exchanged ideas freely. They asked me to bring back to the American people their sense of disgust of the war and their shame for what they have been asked to do.

They told me that the pilots believe they are bombing military targets. They told me that the pilots are told that they are bombing to free their buddies down below, but, of course, we all know that every bomb that falls on North Vietnam endangers the lives of the American prisoners.

They asked me: What can you do? They asked me to bring messages back home to their loved ones and friends, telling them to please be as actively involved in the peace movement as possible, to renew their efforts to end the war.

One of the men who has been in the service for many, many years has written a book about Vietnamese history, and I thought this was very moving, that during the time he's been here, and the time that he has had to reflect on what he has been through and what he has done to this country, he has--his thought has turned to this country, its history of struggle and the people that live here.

They all assured me that they have been well cared for. They--they listen to the radio. They receive letters. They are in good health. They asked about news from home.

I think we all shared during the time that I spent with them a sense of--of deep sadness that a situation like this has to exist, and I certainly felt from them a very sincere desire to explain to the American people that this war is a terrible crime and that it must be stopped, and that Richard Nixon is doing nothing except escalating it while preaching peace, endangering their lives while saying he cares about the prisoners.

And I think one of the things that touched me the most was that one of the pilots said to me that he was reading a book called "The Draft," a book written by the American Friends Service Committee, and that in reading this book, he had understood a lot about what had happened to him as a human being in his 16 years of military service. He said that during those 16 years, he had stopped relating to civilian life, he had forgotten that there was anything else besides the military and he said in realizing what had happened to him, he was very afraid that this was happening to many other people.

I was very encouraged by my meeting with the pilots (?because) I feel that the studying and the reading that they have been doing during their time here has taught them a great deal in putting the pieces of their lives back together again in a better way, hopefully, and I am sure that when--when they go home, they will go home better citizens than when they left.

HANOI RADIO ATTRIBUTES TALK ON DRV VISIT TO JANE FONDA

Hanoi in English to American Servicemen Involved in the Indochina War 1300 GMT
22 Aug 72 B

[Text] Here's Jane Fonda telling her impressions at the end of her visit to the Democratic Republic of Vietnam: [Follows recorded female voice with American accent]

This is Jane Fonda. During my 2-week visit in the Democratic Republic of Vietnam, I've had the opportunity to visit a great many places and speak to a large number of people from all walks of life--workers, peasants, students, artists and dancers, historians, journalists, film actresses, soldiers, militia girls, members of the women's union, writers.

I visited the (Dam Xuac) agricultural Co-op, (?in Ha Tay Province), where the silk-worms are also raised and thread is made. I visited a textile factory, a kindergarten in Hanoi. The beautiful temple of literature was where I saw traditional dances and heard songs of resistance. I also saw an unforgettable ballet about the guerrillas training bees in the south to attack enemy soldiers. The bees were danced by women, and they did their job well.

In the shadow of the temple of literature I saw Vietnamese actors and actresses perform the second act of Arthur Miller's play "All My Sons," and this was very moving to me--the fact that artists here are translating and performing American plays while the U.S. imperialists are bombing their country.

I cherish the memory of the blushing militia girls on the roof of their factory, encouraging one of their sisters as she sang a song praising the blue sky of Vietnam--these women, who are so gentle and poetic, whose voices are so beautiful, but who, when American planes are bombing their city, become such good fighters.

I cherish the way a farmer evacuated from Hanoi, without hesitation, offered me, an American, their best individual bomb shelter while U.S. bombs fell near by. The daughter and I, in fact, shared the shelter wrapped in each others arms, cheek against cheek. It was on the road back from Nam Dinh, where I had witnessed the systematic destruction of civilian targets--schools, hospitals, pagodas, the factories, houses and the dike system.

As I left the United States 2 weeks ago, Nixon was again telling the American people that he was winding down the war, but in the rubble-strewn streets of Nam Dinh, his words echoed with the sinister [words indistinct] of a true killer. And like the young Vietnamese woman I held in my arms clinging to me tightly--and I pressed my cheek against hers--I thought, this is a war against Vietnam perhaps, but the tragedy is America's.

One thing that I have learned beyond the shadow of a doubt since I've been in this country is that Nixon will never be able to break the spirit of these people; he'll never be able to turn Vietnam, north or south, into a neocolony of the United States by bombing, by invading, by attacking in any way. One has only to go into the countryside and listen to the peasants describe the lives they led before the revolution to understand why every bomb that is dropped only strengthens their determination to resist.

I've spoken to many peasants who talked about the days when they and their parents had to sell themselves out to landlords as virtually slaves, when there were very few schools and much illiteracy, inadequate medical care, when they were not masters of their own lives.

But now, despite the bombs, despite the crimes being created--being committed against them by Richard Nixon, these people own their own land, build their own schools--the children are learning, literacy--illiteracy is being wiped out, there is no more prostitution as there was during the time when this was a French colony. In other words, the people have taken power into their own hands, and they are controlling their own lives.

And after 4,000 years of struggling against nature and foreign invaders--and the last 25 years, prior to the revolution, of struggling against French colonialism--I don't think that the people of Vietnam are about to compromise in any way, shape or form about the freedom and independence of their country, and I think Richard Nixon would do well to read Vietnamese history, particularly their poetry, and particularly the poetry written by Ho Chi Minh. [recording ends]

THEME ANALYSIS OF FONDA STATEMENTS TO MEDIA FROM HANOI

July 26, 1972

TO: Donald G. Sanders
Chief Counsel

FROM: Joseph E. Thach
Research Analyst

SUBJECT: MEMORANDUM: THEME ANALYSIS - JANE FONDA'S
STATEMENTS TO MEDIA FROM HANOI, 8 JULY - PRESENT

The recent visit of American film actress Jane Fonda to North Vietnam during the period July 8-22, 1972, has received widespread media coverage both in the United States and North Vietnam. Of special interest to this Committee are Ms. Fonda's six personal broadcasts via Radio Hanoi to American servicemen stationed in South Vietnam and elsewhere in Southeast Asia, all of which contain intrinsic textual passages that these messages were purposely so intended. In addition, several other Radio Hanoi broadcasts (both English-language and in Vietnamese) carried excerpts of her statements, along with "third person" reportage by Soviet (TASS) and French (AFP) radio commentators from Hanoi.

I. Theme Analysis - Fonda Broadcasts to U.S. Servicemen

A. List of Specific Radio Broadcasts, July 14-22, 1972

1. "Hanoi VNA International Service in English, 0246 GMT 14 Jul 72" Fonda statement preceded by Vietnamese broadcaster noting that the message was addressed to "all the U.S. servicemen involved in the bombing of North Vietnam." Fonda's own statement included a description of alleged U.S. bombing of dikes in the vicinity of NAM SACH (60 km. E of Hanoi) on the Red River on July 12 just before her visit to that area. After a quasi-humanitarian appeal on how that district was strictly an agricultural area, and devoid of military targets, she accused the U.S. of "terrorist tactics" because of the bombing raids of July 12. In making her appeal to U.S. servicemen, she asserted:

I (? implore) you, I beg you to consider what you are doing. In the area I went yesterday it was easy to see that there are no military targets,....no important highway,....no communication network,....(and) no heavy industry....All of you in the cockpits of your planes, on the aircraft carriers, those who are loading the bombs, those who are repairing the planes....please think what you are doing.

(7/17/72)

2. "Hanoi in English to American Servicemen Involved in the Indo-China War, 1300 GMT 17 Jul 72" Fonda statement began:

This is Jane Fonda speaking from Hanoi, and I'm speaking particularly to U.S. servicemen who are stationed on the aircraft carriers in the Gulf of Tonkin, in the 7th Fleet, in the Anglico* Corps in the south of Vietnam

After a rather pointed diatribe about U.S. producers of military weaponry, Ms. Fonda then accuses the American military leadership of employing "illegal" weapons, such as "toxic chemicals," guava/spider/pineapple bombs, and combinations of napalm, phosphorous and thermite. She concludes: "And the use of these bombs or the condoning the use of these bombs make one a war criminal."

Endorsing the current Democratic Party nominee as "an example of the overwhelming, overwhelming feeling in the United States among people to end the war," who also "represents all that is good to these people....an end to the war, or end to the bombing," Fonda asserted that it was not "in the interests" of U.S. troops to attack North Vietnam.

Fonda then described the alleged bombing of the BACH MAI hospital which she visited earlier that day. After claiming that a bomb had hit the center of the hospital, "obviously dropped there on purpose," she added: "With the kind of bombs, the kind of techniques that have been developed now, you know, particularly you pilots know that accidents like that don't happen....Why do you do this? Why do you follow orders telling you to destroy a hospital or bomb the schools?"

Obviously begging the question by compounding a false supposition with another, Fonda goes on to relate the use of "plastic" pellets (which, in her expert knowledge of medical technology, "doesn't show up on X-rays")

* Anglico is a current military term which stands for "Air-Naval Gunfire Liaison Company," a shore detachment composed of U.S. Marines and Sailors which direct air and artillery strikes from off-shore Navy ships. The usage of this acronym, hardly a familiar term even within the U.S. armed forces, implies that this particular message is a highly sophisticated appeal prepared by professionals in the field.

- 3 -

which preclude extraction, and "chemical bombs," which causes pregnant women to produce "deformed babies."

In essence, this message employs quasi-humanitarian "scare" tactics and hyper-legal rhetoric which, while not openly advocating U.S. servicemen to disobey orders, certainly distorts the actual nature and purpose of U.S. air operations to a degree that if a serviceman believed all of her a priori arguments, then he could have only one logical alternative, i.e., to refuse to participate in the bombing raids. The message, therefore, represents a highly subliminal appeal to servicemen to disobey orders, etc. evidently prepared by professional propagandists.

3. "Hanoi in English to Europe, Africa and the Middle East, 2000 GMT 19 Jul 72." This is a North Vietnamese news broadcast with excerpts of another Fonda "address to American servicemen" describing her visit to the textile center of Nam Dinh on July 18, which did not appear in FBIS for some reason. Fonda then described the ruins of the hospital, schools, churches, recreation centers and the textile factory in Nam Dinh, all of which were allegedly targeted by U.S. fliers, in spite of the fact that "no military targets" exist in that city. In addition, she alleged that the nearby dike system had "large fissures" from several bombing raids. Following this, she then appealed to U.S. troops:

What are your commanders telling you? How are they justifying this to you. Have you any idea what your bombs are doing when you pull the levers and push the buttons?

This message, in brief, is of the same type of that of July 17 (No. 2 above).

4. "Hanoi in English to Southeast Asia, 1000 GMT 21 Jul 72." Introduced as a "recorded message...to U.S. pilots involved in the Vietnam War," this broadcast generally denounced the U.S. employment of antipersonnel bombs which "were outlawed by the Hague Convention of 1907." She also reiterated the "plastic pellet" story. More important, Fonda asked U.S. fliers:

How does it feel to be used as pawns? You may be shot down...even be killed, but for what, and for whom?...We are afraid of what, what must be happening to you as human beings. For isn't it possible to destroy, to receive salary for pushing buttons and pulling levers that are dropping illegal bombs on innocent people without having that damage your own souls?

Carrying this subliminal, quasi-humanitarian appeal further, Fonda continues:

Tonight when you are alone, ask yourselves: What are you doing? Accept no ready answers fed to you by rote from basic training on up, but as men, as human beings, can you justify what you are doing? Do you know why you are flying these missions, collecting extra combat pay on Sunday?....I know that if you saw and if you knew the Vietnamese under peaceful conditions, you would hate the men who are sending you on bombing missions."

5. "Hanoi in English to American Servicemen Involved in the Indochina War, 1300 GMT 22 Jul 72." In this broadcast, Fonda appealed to everyone involved in the bombing raids over North Vietnam, including specifically naming six U.S. aircraft carriers, "the Anglico Corps" and USAF B-52 and F4 "Phantom" crews. She then accuses President Nixon of lying to the American people about Vietnam, and to American servicemen about the real purpose of the raids on North Vietnam. Switching her appeal to U.S. troops, she again became rhetorical and asked:

All of you...know the lies. You know the cheating on the body counts, the falsified battle reports, and the number of planes that are shot down and what your targets really are. Knowing who was doing the lying, should you then allow these same people and same liars to define for you who your enemy is. Shouldn't we then shouldn't we all examine the reasons that have been given to us to justify the murder that you are being paid to commit? If they told you the truth, you wouldn't fight, you wouldn't kill....You have been told lies so that it would be possible for you to kill."

6. "Hanoi in English to American Servicemen Involved in the Indochina War, 1300 GMT 20 Jul 72." Ms. Fonda, speaking on the 18th anniversary of the 1954 Geneva Accords, gave a rather inept, confusing pro-Communist explanation of that treaty. In spite of her highly slanted presentation, Ms. Fonda decidedly lacked a clear understanding of the script in front of her, hesitating at certain intervals and interspersing her commentary with a generous dose of "umms," "Uhhs" and "ahhs." If her text, which was mainly the standard leftist "anti-Cold War" interpretation of U.S. involvement in Vietnam since 1954 (complete with the old canard attributed to President Eisenhower on the popularity of Ho Chi Minh), failed to alienate

American servicemen listeners, then her presentation certainly did. Based on my own background in psychological operations, it is quite possible we may have gained support among skeptical GI's. In fact, had Benedict Arnold listened to such an appeal during the American Revolution, we probably would have kept him in the fold.

B. Other Communist Press Coverage of the Fonda Trip

1. "Moscow TASS International Service in English, 1720 GMT 14 July 72" - Primarily a "third-person" rehash of her Radio Hanoi broadcast of same date (cf. #A1 above).
2. "Hanoi VNA in English to Havana, 0709 GMT 14 July 72" - Another "third person" report, this time a press dispatch to the North Vietnamese Voice of Vietnam correspondent in Cuba (cf. A1 above).
4. "Hanoi in English to Europe, Africa and Middle East, 2000 GMT 20 Jul 72." Hanoi newscast with taped excerpts of Fonda, prior to her departure in which she described her visit, bomb damage and then launches into a severe anti U.S. tirade. She endorsed the North Vietnamese/Viet Cong Seven Point Peace Proposal, alleged Vietnamization was a failure, and claimed President Nixon and his advisors have embarked on a policy to secure surrender rather than a cease fire. As in all other messages, she asserted that all towns raided by American aircraft were "obviously" devoid of military targets. Briefly mentioning her interview with captured U.S. Airmen, she noted:

There are seven prisoners that I talked to, some of them who had never met, had never spoken to Americans before...and they all re--expressed regret about what they had done, and they said that they had come to recognize that the war is a terrible crime that must be ended immediately.

II. Theme Analysis

A. Central Themes in GI Messages.

<u>Broadcasts of:</u>	<u>7/14</u>	<u>7/17</u>	<u>7/19</u>	<u>7/20</u>	<u>7/21(I)</u>	<u>7/21(II)</u>
1 - Halt Bombing	X	X	X	X	X	X
2 - Nixon Administration "Lies" about Air War's Purpose	X	X	X	X	X	X
3 - Endorsement of "7 Point Peace Plan"				X		
4 - U.S. War Crimes:						
a. Illegal weapons		X			X	
b. Indiscriminate Bombing of Non- Military Areas	X	X	X	X	X	X
c. Chemical Warfare		X				
d. Dike Bombings	X		X			
e. Implied Air War Crimes to U.S.Fliers	X	X	X	X	X	X
5 - U.S. Treaty and Inter- national Law Violations (other than #4 above)		X		X	X	
6 - Belief in North Vietnamese final victory/continued resistance	X	X	X	X	X	

- 7 -

B. Reported Fonda Contacts during Visit

1. Interview with Seven U.S. Prisoners of War:
 - a. Press Interview of July 20 in Hanoi.
 - b. Fonda Message of July 20 on Radio Hanoi.
2. Meeting with North Vietnamese Vice Premier Nguyen Duy Trinh on July 21.
3. Entire Trip as Guest of the Vietnam Committee of Solidarity with the American People (Daily World, 7/25/72:2).

JET:alr

Statements Attributed to Fonda Prior to Hanoi Trip

Jane Fonda's association with the GI Movement and the radical left began when she was 32 (1969) according to a statement that she made on the "People and Povich" TV show shown on July 9, 1972 when she was interviewed concerning the FTA ("Free" the Army) organization and road show.

On November 22, 1969 she made a speech at Michigan State University, East Lansing, Michigan as part of a 32 stop tour to raise funds for the defense of GIs in trouble with the Army, the Vietnam Veterans Against the War (VVAW) and the Black Panther Party. According to a Detroit Free Press reporter who covered the speech she stated:

"I would think that if you understood what communism was, you would hope, you would pray on your knees that we would someday become communist."

"The peace proposal of the Viet Cong is the only honorable, just, possible way to achieve peace in Vietnam".

"Black Panther leader Huey P. Newton is the only man I've ever met that I would trust as the leader of this country."

(While discussing U.S. soldiers) "They're a new kind of soldier. They're not John Wayne freaks over there. No order goes unchallenged."

"When they're sent out on patrol they just go out a little ways. They lie down on a little knoll and blow grass and star gaze."

"They're good soldiers. We should be proud of them. They're not only doing what they're not supposed to do, but they're not even performing the basic functions of soldiers."

During the speech she indicated that there was work to be done on behalf of the Vietcong and referred to the VC in the following fashion:

Vietcong are "driven by the same spirit that drove Washington and Jefferson."

Vietcong are "the conscience of the world."

"I think that the majority of the students are scared of the word 'socialism'. It's a good message (socialism), and the more people give it, the better."

On July 18, 1970 the Peoples World, a West Coast communist newspaper, carried a telephone interview with Jane Fonda. It was reported that she made the following comments:

"To make the revolution in the United States is a slow day by day job that requires patience and discipline. It is the only way to make it." (Committee Exhibit #60, June 20, 1972 re "Investigation of Attempts to Subvert the Armed Forces".)

"That it was the system itself which is at fault and is the problem and until something is done about the capitalist system that everything else is really superficial and meaningless." (Committee Exhibit #60, June 20, 1972 re "Investigation of Attempts to Subvert the Armed Forces".)

"All I know is that despite the fact that I am one of the people who benefit from a capitalist society, I find that any system which exploits other people cannot and should not exist." (Committee Exhibit #60, June 20, 1972 re "Investigation of Attempts to Subvert the Armed Forces".)

An article by Karen Elliot in the December 11, 1971 Dallas Morning News described a speech by Jane Fonda at the University of Texas. Her observations on the new breed of soldiers was reflected in her reported statements: "No order is accepted unchallenged. No smart officer would send his men on a dangerous mission; ask them to cut their hair or beards or stop smoking pot because he would be shot." She further stated that "We've got to establish a socialistic economic structure that will limit private, profit-oriented businesses. Whether the transition is peaceful depends on the way our present governmental leaders react. We must commit our lives to this transition." She added: "We should be very proud of our new breed of soldier. They are not even performing the basic functions of a soldier. It's not organized but it's mutiny, and they have every right."

On December 11, 1970 at Duke University, Durham, N. C., she repeated her statement that: "I would think that if you understood what communism was, you would hope and pray on your knees that we would someday be communist," adding "I am a socialist, I think that we should strive toward a socialist society, -- all the way to communism".

Efforts to Interview Jane Fonda

On August 7, 1972, after determining that Fonda was at her home in North Hollywood, California, Chief Investigator Horner made three attempts to reach her by telephone for the purpose of arranging a personal interview, speaking on each occasion to Ruby Ellen, self-described as Fonda's "assistant". At 5:00 p. m. the same day Horner received a telephone call from Leonard Weinglass who described himself as Fonda's attorney "for this purpose" and said he practices from offices at 108 Washington Street, Newark, N. J. Horner explained to Weinglass the Committee's interest in Fonda's trip to Hanoi, particularly her broadcasts from Hanoi, and said the purpose in attempting to contact her was to determine if she would be agreeable to a staff interview; that no subpoena was involved; that the interview would be strictly voluntary on her part and would be scheduled at her convenience but preferably within the next several days. Weinglass said he would discuss the matter with Fonda and furnish her decision the following day. On August 8th Weinglass informed Horner that Fonda would not agree to an interview. Weinglass asked what she might expect next and was told that as the purpose of Horner's contact was to arrange for a voluntary interview, which Fonda would not agree to, it appeared that the matter was concluded and that Weinglass would have to confer with the Committee's Chief Counsel as far as any other Committee action was concerned. The Committee staff has received no subsequent communication from Fonda or her attorney.

COMPILATION OF BROADCASTS PREVIOUSLY MADE OVER RADIO
HANOI BY OTHER U.S. CITIZENS

September 6, 1972

TO: Donald G. Sanders
Chief Counsel

FROM: Joseph E. Thach
Research Analyst

RE: COMPILATION OF U.S. NATIONALS INVOLVED
IN RADIO HANOI BROADCASTS, 1965-1972

This special memorandum has been prepared to provide a summary of Radio Hanoi broadcasts by U.S. nationals during the Vietnam conflict. Based on my compilation of data, these now total some 82 broadcasts since 1965. Tapes prepared outside of North Vietnam are indicated with an asterisk. Multiple broadcasts within a given year are indicated in parentheses:

- 1965 - Robert Williams (3)*
Clarence C. Adams (2)*
Leo Taylor (2)
Herbert Adams
- 1966 - Robert Williams*
Elizabeth Stafford*
Ed Anderson*
"Radio Stateside" - Los Angeles
Ca. (Steve Fisher and Joel Epstein)(3)*
- 1967 - Hugh R. Manes (2)
Charles Cobb
Stokeley Carmichael (5)
Dagmar Wilson (2)
Ruth Krause
Julius Lester
Thomas Hayden
- 1968 - David Kirby and Mark Fulmer (joint broadcast)

- 2 -

- 1969 - Rennie Davis
 Linda Evans
 Richard J. Barnett and William Meyers (joint broadcast)
 James A. Johnson
- 1970 - Noam Chomsky, Douglas Dowd, and
 Richard Fernandez (joint broadcast)
 Eldridge Cleaver (4)
 Phillip Lawson (2)
 Robert Scheer
~~Edison~~ Brown
 Hideko (Pat) Sumi
 Ann Froines
 Randy Rappaport
 Martha Westover
 Sydney Peck
 Mark Wefers
 Keith Parker
 David Ifshin
- 1971 - Katherine (Kay) Camp
 Theirrie Cook
 Joseph (Jay) Craven (2)
 Mark Wefers
 David Ifshin
 John Woodward
 Rev. Charles Koen
- 1972 - George Wald
 Pete Seeger
 Jane Fonda (21)
 Randy Floyd
 "American Deserters Committee - Sweden"

Log of Statements Attributed to U.S. Citizens which were Broadcast by Hanoi Radio, 1965-1971.

1. Hanoi in English to American Servicemen in S. Vietnam 1330 GMT 17 March 1965. Speech by Negro Leader Robert Williams.
2. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 30 July 1965. Recorded talk by Cecil Clarence Adams.
3. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 4 August 1965. Talk by Margaret
4. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 10 Aug 65. Talk by (Leo Taylor - Phonetic)
5. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 12 Aug 65. Talk by (Leo Taylor - Phonetic)
6. Liberation Radio (Clandestine) in English South Vietnam 1300 GMT 20 Sept 65 (Recorded statement by Robert Williams)
7. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 18 Feb 66. Recorded statement by Robert Williams, American Negro leader in exile.
8. Hanoi in English to Southeast Asia 1000 GMT 9 April 1967. Excerpts from statement by American Lawyer Hugh R. Manes at Press Conference in Hanoi.
9. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 16 April 1967. Recorded statement by Charles Cobb, Member of American Student Nonviolent Coordination Committee, at a Press Conference in Hanoi.
10. Hanoi in English to Amer. Svsmen in S. V. 1300 GMT 22 Apr 67. Recorded statement by American Lawyer Hugh R. Manes at a Press Conference in Hanoi.
11. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 15 Sept 1967. Recorded statement by Stokeley Carmichael.
12. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 18 Sept 1967. Recorded statement by Stokeley Carmichael.
13. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 20 Sept 1967. Recorded statement by Stokeley Carmichael.

14. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 1 Oct 67. Recorded statement by Mrs. Dagmar Wilson, President of Women's Strike for Peace in an interview at Hanoi
15. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 28 Oct 67. Statement by Tom Hayden of Newark, N. Jersey.
16. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 29 Oct 67. Recorded statement by Stokeley Carmichael.
17. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 3 Nov 1967. Recorded interview with Dagmar Wilson & Ruth Krause.
18. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 4 Nov 1967. Recorded statements by Tom Hayden
19. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 5 Nov 1967. Recorded statements by Stokeley Carmichael.
20. Hanoi in English to American Servicemen in S. Vietnam 2300 GMT 6 Aug 1969. Interview with Rennie Davis, Head of American Antiwar Delegation.
21. Hanoi in English to Southeast Asia 1000 GMT 10 Aug 1969. Statement by Linda Evans, member of Students for a Democratic Society, at a mass rally in Hanoi
22. Hanoi in English to American Servicemen in S. Vietnam 2300 GMT 10 Aug 69. Statement by James Johnson, chairman of the Black Antiwar antidraft Union, to black GI's in S.V.
23. Hanoi VNA International Service in English 0551 GMT 12 Nov 69. Speeches by Richard J. Barnett and William Meyers at Hanoi Mtg.
24. Hanoi in English to Southeast Asia 1000 GMT 14 Apr 70. Speeches by Professor Noam Chomsky, Prof. Douglas Dowd, and Clergyman Richard Fernandez at Hanoi meeting welcoming the 1970 American people's spring offensive.
25. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 30 Aug 70 [different date]. Speeches by Eldridge Cleaver and Phil Lawson at 22 August Hanoi rally in solidarity with the struggle of black people in the U.S.
26. Hanoi in English to Southeast Asia 1000 GMT 25 Aug 1970. Eldridge Cleaver's comment on Spiro Agnew's visit to Asia.
27. Hanoi in English to American Servicemen in S. Vietnam 0830 GMT 5 Sep 70. Robert Scheer talks about his visit to both zones of Vietnam.

28. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 6 Sep 70. Interview with Eben Brown.
29. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 7 Sep 70. Part I: Eldridge Cleaver addresses GI's in S. Viet. over the Voice of Vietnam.
30. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 8 Sep 70. Part II: Eldridge Cleaver address.
31. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 9 Sep 70. Statement by Pat Summi to black GI's in S. Vietnam.
32. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 10 Sep 70. Talk by Ann Froines to black GI's in S. Vietnam.
33. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 1 Oct 70. Talk by (Randy Randerport) to GI's in S. Vietnam.
34. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 5 Oct 70. Martha Westover's talk to American GI's in S. Vietnam
35. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 31 Dec 70. David Ifshin's talk over Hanoi radio on "true nature" of the war.
36. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 2 Jan 71. Second part of David Ifshin's speech during his visit to N. Vietnam.
37. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 4 Jan 71. Part I of (J. Craven's) statement during his visit to North Vietnam.
38. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 5 Jan 71. Part II and conclusion of (J. Craven's) statement during his visit to North Vietnam.
39. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 13 Jan 71. Mark Wefer's talk during his visit to N. Vietnam
40. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT 1 Feb 71. Talk by Mme Katherine Camp before her departure from N. Vietnam
41. Hanoi in English to American Servicemen in S. Vietnam 2300 GMT 25 Aug 71. Message to the Vietnamese people and "black brothers in Vietnam" attributed to Reverend Charles Koen, Natl Chairman of the Black United Front.
42. Hanoi in English to Australia and New Zealand 1000 GMT 22 Sep 71. U.S. professor (John Woodward) tells how scientists are used for war work.

43. Hanoi in English to American Servicemen in S. Vietnam 1315 GMT
21 Sept 1965. Recorded talk by Herbert Adams.
44. Hanoi in English to American Servicemen in S. Vietnam 1315 GMT
5 Oct 1965. Recorded talk by Clarence Adams.
45. Hanoi in English to American Servicemen in S. Vietnam 1315 GMT
12 Oct 1965. Recorded statement by Robert Williams.
46. Hanoi in English to Southeast Asia 1000 GMT 22 April 1967. Recorded
statement by Julius Lester, American Negro and Member of the 4th
Investigating Team of the International War Crimes Tri.
47. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT
31 Oct 1967. Recorded statement by Richard E. Smith and Charles
Donald Rice (POW)
48. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT
12 Nov 1967. Recorded statement by Stokeley Carmichael.
49. Hanoi in English to Southeast Asia 1000 GMT 10 June 1968. Recorded
statements by David Kirby and Mark Fulmer, two young Americans
who visited the DRV.
50. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT
20 Sep 70. Talk by Phil Lawson to black GI's in S. Vietnam.
51. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT
30 Nov 1970. Interview with Prof. Sydney Peck on GI's antiwar
movement in the U.S.
52. Hanoi in English to American Servicemen in S. Vietnam 1430 GMT
23 Dec 1970. Recorded talk by Mark Wefers.
53. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT
30 Dec 1970. (Zeus) A. Parker's talk to black GI's in S. Vietnam.
54. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT
6 Jan 1971. Terrie Cook's speech during her visit to N.Vietnam.
55. Hanoi in English to American Servicemen in S. Vietnam 1300 GMT
1 Feb 1971. Talk by Mme Katherine Camp before her departure from
N. Vietnam.

MEMO RE RADIO BROADCASTS FROM NORTH VIETNAM BY U.S.
CITIZENSCONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNAL SECURITY
WASHINGTON, D.C. 20515

MEMO

September 5, 1972

TO: Donald G. Sanders
Chief Counsel

FROM: Joseph E. Thach
Research Analyst

SUBJECT: RADIO BROADCASTS FROM NORTH VIETNAM BY U.S. CITIZENS
1965-1972

This report is submitted as a succinct but comprehensive analysis of radio propaganda broadcasts by U.S. citizens from North Vietnam during the Vietnam conflict to provide additional background concerning the recent activities of Jane Fonda during her visit to that Communist country. It should be noted as an aside that Ms. Fonda's broadcasts now total some twelve specifically identified as addressed to U.S. military personnel. Of these, six were broadcast while she was in North Vietnam. Six others have been transmitted via Radio Hanoi on a delayed tape basis since her departure on July 22, with the latest sent on August 22. Eight other radio messages, which began with Ms. Fonda speaking English, were broadcast in Vietnamese and were addressed to South Vietnamese youth, students, women and the military.

In general, the radio broadcasts from North Vietnam by Americans since 1965 fall into three main categories:

1. Those made by U.S. antiwar activists and black militants while visiting North Vietnam.
2. Those made by above individuals and groups made elsewhere and then broadcast on Radio Hanoi at a later date.
3. Those broadcast by captured U.S. servicemen with specific political themes.

In addition, another category which can be established (or included in #1-3, above) based on specific message content, is that of identified U.S. military personnel defectors. With respect to the period covered, i.e., 1965-1972, one Korean War defector and another of Vietnam Conflict period, have been identified with such activities.

- 2 -

With respect to radio broadcasts (or English-language radio interviews) by U.S. antiwar activists and black militants during their visits to North Vietnam, their frequency has only become apparent in the past three years, although Radio Hanoi has used direct quotes from U.S. visitors since the Hayden-Lynd-Aptheker trip of December 1965. For example, James A. Johnson one of the "Fort Hood Three" defendants in 1966 and currently a member of Executive Committee of the CPUSA youth group, the Young Workers Liberation League, travelled to Hanoi in August 1969 as part of the Rennie Davis-led New Move group which secured the release of Navy men Lt. Robert Frishman and Seaman Douglas Hegdahl and Air Force Captain Wesley Rumble. Johnson, then overtly representing the National Black Anti-war Anti-draft Union, was quoted as stating:

We consider it fitting that I, a black man and an ex-GI who spent 28 months in U.S. prisons for refusing to fight against the Vietnamese people, should read this statement. Thousands of American GI's now feel that their fight is not with the people of Vietnam. Their fight is with those who make the war in this country....
(Quoted from FBIS Daily Report, 4 August 1969 in SDS Hearings, Pt. 7-A, p. 2380).

A year later, Black Panther Party Minister of Information, Eldridge Cleaver and Reverend Phillip Lawson, a Methodist minister closely associated with the Panthers in Kansas City, Missouri, visited North Vietnam as part of the "American People's Anti-imperialist Delegation." At a ceremony commemorating black solidarity with the Communist Vietnamese "struggle" in Indochina on August 27, 1970, which was broadcast two days later on Radio Hanoi, Cleaver stated:

The rise of the struggle of black people inside the U.S. is a sure sign that the days of U.S. imperialism are numbered....The combination of the external revolutionary forces and the internal revolutionary forces is an unbeatable combination and together, we are going to crush U.S. imperialism and thus usher in a new and happy day for mankind.

Denouncing the concurrent Asian mission of Vice President Agnew to South Vietnam, South Korea and Nationalist China, Cleaver took his violently anti-U.S. diatribe ad hominem as he characterized Mr. Agnew as "the number two fascist pig in the Nixon clique, Spiro Agnew, Spiro pig Agnew...."

For his part, Reverend Lawson, also a New Mobe Executive Committee member, sent greetings to the North Vietnamese from that organization. While his remarks at that time were less vehement, if equally anti-American, Lawson's delayed-tape broadcast of September 20, 1970, far exceeded Cleaver's remarks in content and aiming at a specific audience. Addressing his statement to "my black brothers in the U.S. forces in Vietnam," Lawson declared:

For two weeks, I have been visiting with the people of Vietnam. I have seen what you have been ordered to do to these people. Very frankly, you know what you are doing is criminal, for the same action many persons were convicted of being war criminals. You must become men who will stand up and say no when you are given criminal orders....Black brothers, do not kill women and children. You can shoot over their heads, you can prevent the racist white soldiers from slaughtering these people. You can disobey all racist officers and their racist orders. Black brothers, the real war for independence, freedom and justice is being fought in the United States. What you do now in Vietnam will determine what you do back home. If you join the Vietnamese forces...your black brothers and sisters in the United States will welcome your return as a true black man, But if you continue to be used...your black brothers and sisters...will surely see you as members of a black police force returning to their black community.

(September 24, 1970)

In an interview in the Kansas City Star in October 1970, Lawson readily admitted the accuracy of his statements as broadcast. Claiming he spoke as "a black minister talking to black soldiers," he further stated that "he did not consider the broadcast as 'giving aid or comfort to the enemy', particularly since the United States has never declared war on North Vietnam." "it's a matter of defining the enemy," Lawson concluded, "In the Vietnam war, who is our enemy? I don't think the Communists are the enemy in Vietnam."

After Reverend Lawson's broadcast, a delegation from the National Student Association, which visited Hanoi to negotiate the "People's Peace Treaty" in December 1970, made six separate broadcasts from Hanoi. Such antiwar activists as Noam Chomsky, Richard Fernandez, Robert Scheer, Sidney Peck and Ann Froines also made broadcasts during their respective 1970 visits to North Vietnam. In addition, Movement for a Democratic Military leader Hideko "Pat" Sumi, who traveled with the Cleaver Black Panther group to Hanoi, Peking, and Pyongyang, was another individual identified as making GI broadcasts in September 1970.

On February 27, 1972, Radio Hanoi presented an interview with Harvard biology Professor and Nobel Prize winner, George Wald. Evidently, the delayed-tape had been made a week or two before when Wald visited the DRV as a guest of the Vietnamese Committee for Solidarity with the American People, the same group which has sponsored many U.S. antiwar activists since 1965, including Jane Fonda. At that time, Professor Wald claimed that the U.S. was guilty of conducting the deliberate chemical, biological and ecological campaigns to destroy South Vietnam. Conversely, Wald claimed that the American public was being misled by the military in that the damage to Vietnamese agriculture and forests by herbicides and defoliation was "largely permanent."

Claiming that he and many other American scientists have been in the forefront of the U.S. antiwar movement, Wald added that another strong element in that coalition was the Vietnam Veterans Against the War. Recalling the April 1971 VVAW activities in Washington, D. C., Wald noted that these veterans were "now the most bitter opponents of the war," and were "ashamed of their part" in it. In addition, Wald mentioned his interview with two captured American fliers, in which he noted:

I think that from those conversations that you could find no more powerful voices against the American part in the Vietnam war than the voices of those American prisoners...they explained that they hardly knew why they were coming. They were simply following orders. But now they know, and are violently against this war and want our country to get out of it as quickly as possible. And one of the reasons for that feeling is the great consideration and kindness and care with which they were treated, immediately from their capture onwards....
(February 28, 1972)

Another visitor to North Vietnam (and also to Red China) in March 1972, folk-singer and identified CPUSA member Pete Seeger, admitted to having made tapes for GI's to be broadcast by Radio Hanoi.

Seeger claimed in a Saturday Review article:

Monday [March 20, 1972] - I do two twenty-minute broadcasts that will be broadcast to GIs over 'Voice of Vietnam.' I have been thinking all week about what I will say and sing and, after talking with Seymour Hersh [the U.S. writer and author of My Lai 4] and Toshi [Mrs. Seeger], decided to stay strictly away from political explanations of any sort.

I start with the song 'Turn, Turn, Turn'....Then I say, 'Yes, this is Pete Seeger from Beacon, New York and some of my friends will say 'What the hell are you doing up there?' Perhaps the question is 'What are any of us doing in this part of the world?'....[Pete Seeger, "Strummin' Banjo in North Vietnam," Saturday Review (May 13, 1972), p. 32].

Prior to Miss Fonda, Seeger was the last reported U.S. national involved in Radio Hanoi broadcasts to U.S. servicemen.

The second category of broadcasts, i.e., those originated elsewhere but transmitted from North Vietnam, has also been utilized frequently since 1965. Two early broadcasters in this category were black militant Robert Williams and another black Korean War defector Clarence Adams, who taped their messages in Peking for replay over North Vietnamese media. Aimed primarily at blacks and other minorities, these messages called on American servicemen to desert or to demand their return to the U.S. where they were to aid in the "real struggle," i.e., in the ghettos of American cities. This divisive theme, as can be seen with the previously-mentioned "live" broadcasts by Cleaver and Lawson, has been continued to the present. In 1967-1969, black militant activists such as Charles Cobb and Stokely Carmichael of SNCC (now SCC), Julius Lester and James A. Johnson made similar appeals to black and minority GI's. With respect to Williams and Adams, however, both men have been permitted re-entry into the United States after making such blatant propaganda.

Several other taped broadcasts made during 1966 were originated in the U.S. One, a Fourth of July Message by an otherwise unidentifiable female, Elizabeth Stafford, declared the war "unjust" in light of the Founding Fathers concepts of freedom and independence, and accused the U.S. of war crimes in Vietnam. Another, a Christmas message by an Ed Anderson, played up domestic problems such as racial strife, hunger and disease along with portraying the "hopeless" war in Vietnam. Finally, the year 1966 saw several broadcasts by "Radio Stateside," which made tapes in Los Angeles for broadcast from Hanoi. Two announcers, Steve Fisher and Joe Epstein, combined music with a highly-slanted analysis of the news, especially on the Vietnam War. Sandwiched in between were appeals for desertion and conscientious objector applications. In particular, the pair asked GI's to contact the heavily Communist-infiltrated Vietnam Day Committee which was headquartered at Berkeley, and also the Central Committee for Conscientious Objectors, located in Philadelphia, Pennsylvania. In toto, Radio Stateside made three known broadcasts (January 4, February 16, and August 17) in 1966, and thereafter ceased operations. According to testimony given during HCIS military subversion hearings in October 1971, this technique was again employed in early 1971 with WPAX, Inc., the brainchild of Yippie leader and "Chicago 8" defendant Abby Hoffman. This time, according to Hoffman, in his "official retirement from the Movement" letter published in the Guardian during September 1971, Federal authorities reportedly seized the WPAX tapes at the airport.

The third category consists of U.S. servicemen in the custody of the North Vietnamese and Vietcong. Here a distinction must be made between the broadcasts of American airmen held prisoner in North Vietnam and a select group of U.S. Army and Marine Corps personnel in custody of the Vietcong. For the most part, American airmen who have been captured after

being downed over North Vietnam, have been permitted to make statements to alert military authorities and next of kin of their present status. Although some of these messages have included passages that the pilots were "re-considering" U.S. involvement in Vietnam and their own roles therein, the employment of an ethical technique known as a "broad mental reservation" is fairly obvious. In 1971-1972, some of these messages have become rather propagandistic, but a hard core of "progressives" cannot be detected based on the continual traffic analysis of the Radio Hanoi broadcasts.

On the other hand, it is evident that a "hard core" group has emerged among U.S. Army and Marine Corps personnel held by the Vietcong. In this group of about a dozen men is a U.S. Army doctor captured in early 1968. Others are a self-admitted U.S. Army defector to the Vietcong, two Army aviators, two Army Special Forces personnel and several enlisted members of the Marine Corps. The defector, a black soldier who went over to the Vietcong in May 1968, told American troops this past April:

Refuse to go out on any type of operation, especially combat, including support of the ARVN, who'll only let you down.

In an earlier broadcast in February, this same individual in a joint broadcast with another soldier and a marine endorsed the World Assembly for the Peace and Independence of the Indochinese People and such domestic activities as the six-week series of NPAC/PCPJ demonstrations of March-May 1972, and the earlier protest and "Winter Soldier Investigation" of the Vietnam Veterans Against the War in January and April, 1971, respectively. Since April 1971, this small elite has broadcast continually these propaganda themes to U.S. forces in South Vietnam on a regular basis. Although these broadcasts have generally been timed with major events in the combat zone and on the domestic scene, i.e., anti-war activities and the like, the median of broadcasts has been 4-6 per month.

In summary, the Vietnamese Communist manipulation of these three major types of U.S. broadcasters has, since 1965, provided a steady stream of propaganda directed against American forces in Southeast Asia. In terms of the first category alone, U.S. visitors to North Vietnam have made 82 identified broadcasts

By co-timing broadcasts from all three types, it is apparent that the Vietnamese Communists have attempted to gain credibility for their propaganda by means of a technique called theme reinforcement, whereby various speakers from different backgrounds reiterate the same basic theme time and time again somewhat akin to the Nazi propagandist Dr. Goebbels' dictum: "Truth is merely an oft-repeated lie."

- 7 -

The recent dike bombing theme is a case in point. Besides Ms. Fonda, U.S. prisoners of war, foreign correspondents and a former U.S. attorney general have mutually reinforced the theme that U.S. aircraft were intentionally bombing the dikes in North Vietnam, along with schools, hospitals and populated areas. When the evidence for these allegations are examined closely, however, the conclusive proof becomes quicksilver and would scarcely hold water in any but a highly-slanted tribunal of justice.

JET:alr

CASES ADJUDGED
IN THE
SUPREME COURT OF THE UNITED STATES
AT
OCTOBER TERM, 1964.

ZEMEL *v.* RUSK, SECRETARY OF STATE, ET AL.
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT.

No. 86. Argued March 1, 1965.—Decided May 3, 1965.

After this country had broken diplomatic relations with Cuba and the Department of State had eliminated Cuba from the area for which passports were not required, appellant applied to have his passport validated for travel to Cuba "to satisfy [his] curiosity . . . and to make [him] a better informed citizen." His request was denied, and he filed suit in federal district court seeking a judgment declaring that he was entitled under the Constitution and laws of the United States to travel to Cuba and to have his passport validated for that purpose, that the Secretary of State's travel restrictions were invalid, and that the Passport Act of 1926 and § 215 of the Immigration and Nationality Act of 1952 were unconstitutional. In addition, he prayed that the Secretary and the Attorney General be enjoined from interfering with such travel. A three-judge court granted the Secretary's motion for summary judgment and dismissed the action against the Attorney General. *Held:*

1. Since the complaint launched a substantial constitutional attack upon two federal statutes and prayed that their operation be enjoined, the three-judge court was properly convened. Pp. 5-7.

2. The Passport Act of 1926 grants authority to the Executive to refuse validation of passports for Cuban travel. Pp. 7-13.

(a) The consistent interpretation by the Department of State of its authority to impose area restrictions, both before and after

the 1926 enactment, must be given weight by the courts in construing the statute. Pp. 8-11.

(b) In 1952 Congress enacted legislation relating to passports, but despite the many executive impositions of area restrictions it left untouched the broad rule-making authority granted in the Passport Act of 1926. P. 12.

(c) This case, where the Secretary's refusal is based on foreign policy considerations affecting all citizens, is distinguished from *Kent v. Dulles*, 357 U. S. 116, where the passport denial was based on the applicant's political beliefs or associations. Pp. 12-13.

3. The restriction on travel to Cuba does not abridge appellant's constitutional rights. Pp. 13-18.

(a) The fact that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited. P. 14.

(b) The restriction here is justified by the weightiest considerations of national security. Pp. 14-15.

(c) The failure to validate appellant's passport results in an inhibition of action and not a restriction of a First Amendment right. The right to speak and publish does not carry with it an unrestrained right to gather information. Pp. 16-17.

(d) The Passport Act of 1926 contains sufficiently definite standards for action, especially since the area is that of foreign affairs where the Executive has broad authority. P. 17.

(e) The Passport Act of 1926 does not grant the Executive completely unrestricted freedom of action, as it authorizes only those passport restrictions which it could fairly be argued were adopted by Congress in light of prior administrative practice. Pp. 17-18.

4. Adjudication of the reach and constitutionality of § 215 (b) of the Immigration and Nationality Act of 1952 as applied to travel in violation of an area restriction must await a concrete factual situation. Pp. 18-20.

228 F. Supp. 65, affirmed.

Leonard B. Boudin argued the cause for appellant. With him on the briefs were *Victor Rabinowitz* and *Samuel Gruber*.

Solicitor General Cox argued the cause for appellees. With him on the brief were *Assistant Attorney General*

ZEMEL v. RUSK.

3

1

Opinion of the Court.

Yeagley, Daniel M. Friedman, Bruce J. Terris, Kevin T. Maroney and Lee B. Anderson.

Edward J. Ennis and Melvin L. Wulf filed a brief for the American Civil Liberties Union, as *amicus curiae*, urging reversal.

Isidore Englander and Joseph Forer filed a brief for Anatol Schlosser, as *amicus curiae*.

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The questions for decision are whether the Secretary of State is statutorily authorized to refuse to validate the passports of United States citizens for travel to Cuba, and, if he is, whether the exercise of that authority is constitutionally permissible. We answer both questions in the affirmative.

Prior to 1961 no passport was required for travel anywhere in the Western Hemisphere. On January 3 of that year, the United States broke diplomatic and consular relations with Cuba. On January 16 the Department of State eliminated Cuba from the area for which passports were not required, and declared all outstanding United States passports (except those held by persons already in Cuba) to be invalid for travel to or in Cuba "unless specifically endorsed for such travel under the authority of the Secretary of State." A companion press release stated that the Department contemplated granting exceptions to "persons whose travel may be regarded as being in the best interests of the United States, such as newsmen or businessmen with previously established business interests."

Through an exchange of letters in early 1962, appellant, a citizen of the United States and holder of an otherwise valid passport, applied to the State Department to have his passport validated for travel to Cuba as a tourist. His

request was denied. On October 30, 1962, he renewed the request, stating that the purpose of the proposed trip was "to satisfy my curiosity about the state of affairs in Cuba and to make me a better informed citizen." The request again was denied, on the ground that the purpose of the trip did not meet the previously prescribed standards for such travel.

On December 7, 1962, appellant instituted this suit against the Secretary of State and the Attorney General in the United States District Court for the District of Connecticut, seeking a judgment declaring: (1) that he was entitled under the Constitution and laws of the United States to travel to Cuba and to have his passport validated for that purpose; (2) that his travel to Cuba and the use of his passport for that purpose would not violate any statute, regulation, or passport restriction; (3) that the Secretary's restrictions upon travel to Cuba were invalid; (4) that the Passport Act of 1926 and § 215 of the Immigration and Nationality Act of 1952 were unconstitutional; (5) that the Secretary's refusal to grant him a passport valid for Cuba violated rights guaranteed him by the Constitution and the United Nations Declaration of Human Rights; and (6) that denial of the passport endorsement without a formal hearing violated his rights under the Fifth Amendment.¹ The complaint also requested that the Secretary be directed to validate appellant's passport for travel to Cuba and that the Secretary and the Attorney General be enjoined from interfering with such travel. In his amended complaint, appellant added to his constitutional attack on the 1926 and 1952 Acts a prayer that the Secretary and the Attorney General be enjoined from enforcing them.

On appellant's motion, and over the objection of appellees, a three-judge court was convened. On cross-

¹ This procedural claim was abandoned in the District Court and has not been urged here.

1

Opinion of the Court.

motions for summary judgment, the court, by a divided vote, granted the Secretary of State's motion for summary judgment and dismissed the action against the Attorney General, 228 F. Supp. 65 (D. C. D. Conn. 1964). We postponed consideration of the jurisdictional question to the hearing of the case on the merits, 379 U. S. 809.

I.

A direct appeal to this Court from a district court lies under 28 U. S. C. § 1253 (1958 ed.) only "from an order granting or denying . . . an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." Thus we must deal first with the Government's contention that a three-judge court was improperly convened, for if the contention is correct, this Court lacks jurisdiction over the appeal. *Phillips v. United States*, 312 U. S. 246, 248.

Section 2282 of Title 28 of the United States Code requires the impanelling of a three-judge court in any case where the relief sought is "[a]n interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States" On its face, appellant's amended complaint, by calling upon the court below to enjoin the enforcement of the Passport Act of 1926 and § 215 of the Immigration and Nationality Act of 1952, on the ground that those statutes are unconstitutional, meets the requirements of § 2282. The Solicitor General notes that appellant would be accorded full relief by the voiding of the Secretary's order. It is true that appellant's argument—that either the Secretary's order is not supported by the authority granted him by Congress, or the statutes granting that authority are unconstitutional—is two-pronged. But we have often held that a

litigant need not abandon his nonconstitutional arguments in order to obtain a three-judge court: "the joining in the complaint of a nonconstitutional attack along with the constitutional one does not dispense with the necessity to convene such a court."²

The Solicitor General, apparently conceding—as all three judges below agreed—that appellant's Fifth Amendment attack is substantial, cf. *Kent v. Dulles*, 357 U. S. 116, 125; *Aptheker v. Secretary of State*, 378 U. S. 500, 505–506, argues that it is in reality an attack upon an administrative, as opposed to a legislative, policy, and therefore, under cases like *Phillips v. United States*, 312 U. S. 246, and *Ex parte Bransford*, 310 U. S. 354, a three-judge court need not have been convened. We need not evaluate this contention, for appellant's complaint also attacks the 1926 and 1952 Acts on the ground that "they contain no standards and are therefore an invalid delegation of legislative power." This allegation cannot be brushed aside as an attack upon the actions of the Secretary; in arguing invalid delegation, appellant has quite clearly assailed the statutes themselves. The Solicitor General therefore meets the delegation argument on another ground: by labeling it "frivolous." Although we do not accept appellant's delegation argument, *infra*, pp. 17–18, we cannot agree that it is so insubstantial as to compel a district court to read it out of the complaint and refuse to convene a three-judge court. Compare *William Jameson & Co. v. Morgenthau*, 307 U. S. 171; *Schneider v. Rusk*, 372 U. S. 224. Indeed, we explicitly noted in *Kent v. Dulles*, *supra*, at 129, that if we had held that the Secretary's refusal to issue a passport to petitioner in that case was supported by the 1926 and 1952 Acts, we would

² *Florida Lime Growers v. Jacobsen*, 362 U. S. 73, 80; see also *Allen v. Grand Central Aircraft Co.*, 347 U. S. 535; *Lee v. Bickell*, 292 U. S. 415; *Sterling v. Constantin*, 287 U. S. 378.

1

Opinion of the Court.

then have been obliged to consider whether those Acts were void for invalid delegation.³

The complaint therefore launches a substantial constitutional attack upon two federal statutes, and prays that their operation be enjoined. Cf. *Idlewild Liquor Corp. v. Epstein*, 370 U. S. 713, 715. We hold that the three-judge court was properly convened, and that we therefore have jurisdiction over the appeal.⁴

II.

We think that the Passport Act of 1926, 44 Stat. 887, 22 U. S. C. § 211a (1958 ed.), embodies a grant of authority to the Executive to refuse to validate the passports of United States citizens for travel to Cuba. That Act provides, in pertinent part:

“The Secretary of State may grant and issue passports . . . under such rules as the President shall

³ See also *Douglas v. Noble*, 261 U. S. 165.

⁴ The convening of a three-judge court in this case surely coincides with the legislative policy underlying the passage of § 2282:

“The legislative history of § 2282 and of its complement, § 2281 . . . indicates that these sections were enacted to prevent a single federal judge from being able to paralyze totally the operation of an entire regulatory scheme, either state or federal, by issuance of a broad injunctive order. . . . Repeatedly emphasized during the congressional debates on § 2282 were the heavy pecuniary costs of the unforeseen and debilitating interruptions in the administration of federal law which could be wrought by a single judge’s order, and the great burdens entailed in coping with harassing actions brought one after another to challenge the operation of an entire statutory scheme, wherever jurisdiction over government officials could be acquired, until a judge was ultimately found who would grant the desired injunction.” *Kennedy v. Mendoza-Martinez*, 372 U. S. 144, 154–155. Appellant in this case does not challenge merely a “single, unique exercise” of the Secretary’s authority, cf. *Phillips v. United States*, *supra*, at 253. On the contrary, this suit seeks to “paralyze totally the operation of an entire regulatory scheme,” indeed, a regulatory scheme designed and administered to promote the security of the Nation.

designate and prescribe for and on behalf of the United States”⁵

This provision is derived from § 23 of the Act of August 18, 1856, 11 Stat. 52, 60–61, which had, prior to 1926, been re-enacted several times without substantial change. The legislative history of the 1926 Act and its predecessors does not, it is true, affirmatively indicate an intention to authorize area restrictions. However, its language is surely broad enough to authorize area restrictions, and there is no legislative history indicating an intent to exclude such restrictions from the grant of authority; these factors take on added significance when viewed in light of the fact that during the decade preceding the passage of the Act, the Executive had imposed both peacetime and wartime area restrictions. As a result of a famine in Belgium in 1915, the State Department stopped issuing passports for use in that country except to “applicants obliged to go thither by special exigency or authorized by Red Cross or Belgian Relief Commission.” III Hackworth, *Digest of International Law*, p. 526 (1942). Beginning December 9, 1914, and continuing through World War I, passports were validated only for specific purposes and specific countries. No passports were issued for travel in Germany and Austria until July 18, 1922, and none for the Soviet Union until approximately September 1923.

⁵ The Secretary of State, rather than the President, imposed the restriction on travel to Cuba. However, Congress has provided that “[t]he Secretary of State shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to . . . such . . . matters respecting foreign affairs as the President of the United States shall assign to the department” R. S. § 202, 5 U. S. C. § 156 (1958 ed.). The President, in turn, has authorized the Secretary in his discretion “to restrict a passport for use only in certain countries [or] to restrict it against use in certain countries” Exec. Order No. 7856, 3 Fed. Reg. 681, 687, 22 CFR § 51.75.

Hearings before the Senate Committee on Foreign Relations on Department of State Passport Policies, 85th Cong., 1st Sess., pp. 63-64. The use in the 1926 Act of language broad enough to permit executive imposition of area restrictions, after the Executive had several times in the recent past openly asserted the power to impose such restrictions under predecessor statutes containing substantially the same language, supports the conclusion that Congress intended in 1926 to maintain in the Executive the authority to make such restrictions.⁶

This construction of the Act is reinforced by the State Department's continued imposition of area restrictions during both times of war and periods of peace since 1926. For a period of about seven months following the outbreak of war between Italy and Ethiopia in 1935, the Department declined to issue passports for travel in Ethiopia, except to journalists, Red Cross representatives, and others able to show a "compelling exigency" necessitating such travel. In cases where persons did not include Ethiopia in their applications, but were—by reason of the mention in their applications of adjacent countries—suspected of intending to travel therein, their passports were stamped "not valid for use in Ethiopia." III Hackworth, *supra*, pp. 531-532. Following the outbreak of the Spanish Civil War in 1936, passports were stamped "not valid for travel in Spain," with exceptions for newspapermen and persons furnishing medical assistance. *Id.*, at 533-534. A similar restriction was placed on travel to China in August 1937, in view of "the disturbed situation in the Far East." Passports were validated for travel to China only "in exceptional circumstances," and in no case for women or children. *Id.*, at 532-533.

⁶ *United States v. Cerecedo Hermanos y Compania*, 209 U. S. 337; *Service v. Dulles*, 354 U. S. 363, 380; *Labor Board v. Gullett Gin Co.*, 340 U. S. 361, 366.

On March 31, 1938, the President, purporting to act pursuant to the 1926 Act, specifically authorized the Secretary to impose area restrictions in the issuance of passports, Exec. Order No. 7856, 3 Fed. Reg. 681, 687:

"The Secretary of State is authorized in his discretion to refuse to issue a passport, to restrict a passport for use only in certain countries, to restrict it against use in certain countries, to withdraw or cancel a passport already issued, and to withdraw a passport for the purpose of restricting its validity or use in certain countries."

This Executive Order is still in force. 22 CFR § 51.75. In September 1939, travel to Europe was prohibited except with a passport specially validated for such travel; passports were so validated only upon a showing of the "imperativeness" of the travel. Departmental Order No. 811, 4 Fed. Reg. 3892.

Area restrictions have also been imposed on numerous occasions since World War II. Travel to Yugoslavia was restricted in the late 1940's as a result of a series of incidents involving American citizens. Dept. State Press Conf., May 9, 1947. Travel to Hungary was restricted between December 1949 and May 1951, and after December 1951.⁷ In June 1951, the State Department began to stamp passports "not valid for travel in Czechoslovakia," and declared that all passports outstanding at that time were not valid for such travel. 24 Dept. State Bull. 932. In May 1952, the Department issued a general order that all new passports would be stamped not valid for travel to Albania, Bulgaria, Communist China, Czechoslovakia, Hungary, Poland, Rumania and the Soviet Union. 26 *id.*, at 736. In October 1955, the Secretary announced that passports would no longer require special validation

⁷ 22 Dept. State Bull. 399; 26 *id.*, at 7.

1

Opinion of the Court.

for travel to Czechoslovakia, Hungary, Poland, Rumania and the Soviet Union, but would be stamped invalid for travel "to the following areas under control of authorities with which the United States does not have diplomatic relations: Albania, Bulgaria, and those portions of China, Korea and Viet-Nam under communist control." 33 *id.*, at 777. In February 1956, the restriction on travel to Hungary was reimposed. 34 *id.*, at 246-248. And in late 1956, passports were for a brief period stamped invalid for travel to or in Egypt, Israel, Jordan and Syria. 35 *id.*, at 756.

Even if there had been no passport legislation enacted since the 1926 Act, the post-1926 history of executive imposition of area restrictions, as well as the pre-1926 history, would be of relevance to our construction of the Act. The interpretation expressly placed on a statute by those charged with its administration must be given weight by courts faced with the task of construing the statute. *Udall v. Tallman*, 380 U. S. 1, 16-18; *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, 315. Under some circumstances, Congress' failure to repeal or revise in the face of such administrative interpretation has been held to constitute persuasive evidence that that interpretation is the one intended by Congress.⁸ In this case, however, the inference is supported by more than mere congressional inaction. For in 1952 Congress, substantially re-enacting laws which had been passed during the First and Second World Wars,⁹ provided that after the issuance of a presidential proclamation of war or national emergency, it would be unlawful to leave or enter the

⁸ *Norwegian Nitrogen Co. v. United States*, *supra*, at 313; *Costanzo v. Tillinghast*, 287 U. S. 341, 345; *United States v. Midwest Oil Co.*, 236 U. S. 459, 472-473.

⁹ Act of May 22, 1918, 40 Stat. 559; Act of June 21, 1941, 55 Stat. 252.

United States without a valid passport. Section 215 of the Immigration and Nationality Act of 1952, 66 Stat. 190, 8 U. S. C. § 1185 (1958 ed.). The Solicitor General urges that in view of the issuance in 1953 of a presidential proclamation of national emergency which is still outstanding,¹⁰ travel in violation of an area restriction imposed on an otherwise valid passport is unlawful under the 1952 Act. The correctness of this interpretation is a question we do not reach on this appeal, see *infra*, pp. 18–20. But whether or not the new legislation was intended to attach criminal penalties to the violation of area restrictions, it certainly was not meant to cut back upon the power to impose such restrictions. Despite 26 years of executive interpretation of the 1926 Act as authorizing the imposition of area restrictions, Congress in 1952, though it once again enacted legislation relating to passports, left completely untouched the broad rule-making authority granted in the earlier Act. Cf. *Norwegian Nitrogen Co. v. United States*, *supra*, at 313.¹¹

This case is therefore not like *Kent v. Dulles*, *supra*, where we were unable to find, with regard to the sort of passport refusal involved there, an administrative practice sufficiently substantial and consistent to warrant the conclusion that Congress had implicitly approved it.

¹⁰ Pres. Proc. No. 3004, 67 Stat. c31; cf. Exec. Order No. 11037, 3 CFR 621 (1959–1963 Comp.).

¹¹ Pres. Proc. No. 3004, 67 Stat. c31, which was issued in 1953 pursuant to § 215, stated that the departure and entry of citizens would be governed by “sections 53.1 to 53.9, inclusive, of title 22 of the Code of Federal Regulations.” 22 CFR § 53.8 (1949 ed.) provided:

“Nothing in this part shall be construed to prevent the Secretary of State from exercising the discretion resting in him to refuse to issue a passport, to restrict its use to certain countries, to withdraw or cancel a passport already issued, or to withdraw a passport for the purpose of restricting its validity or use in certain countries.”

1

Opinion of the Court.

Appellant reminds us that in summarizing the Secretary's practice in *Kent*, we observed:

"So far as material here, the cases of refusal of passports generally fell into two categories. First, questions pertinent to the citizenship of the applicant and his allegiance to the United States had to be resolved by the Secretary Second, was the question whether the applicant was participating in illegal conduct, trying to escape the toils of the law, promoting passport frauds, or otherwise engaging in conduct which would violate the laws of the United States." 357 U. S., at 127.

It must be remembered, in reading this passage, that the issue involved in *Kent* was whether a citizen could be denied a passport because of his political beliefs or associations. In finding that history did not support the position of the Secretary in that case, we summarized that history "so far as material here"—that is, so far as material to passport refusals based on the character of the particular applicant. In this case, however, the Secretary has refused to validate appellant's passport not because of any characteristic peculiar to appellant, but rather because of foreign policy considerations affecting all citizens.

III.

Having concluded that the Secretary of State's refusal to validate appellant's passport for travel to Cuba is supported by the authority granted by Congress in the Passport Act of 1926, we must next consider whether that refusal abridges any constitutional right of appellant. Although we do not in this case reach the question of whether the 1952 Act should be read to attach criminal penalties to travel to an area for which one's passport is not validated, we must, if we are to approach the constitutional issues presented by this appeal candidly, pro-

ceed on the assumption that the Secretary's refusal to validate a passport for a given area acts as a deterrent to travel to that area. In *Kent v. Dulles*, *supra*, at 125, we held that "[t]he right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment." See also *Aptheker v. Secretary of State*, *supra*, at 505-506. However, the fact that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited.¹²

The requirements of due process are a function not only of the extent of the governmental restriction imposed,¹³ but also of the extent of the necessity for the restriction. Cuba is the only area in the Western Hemisphere controlled by a Communist government. It is, moreover, the judgment of the State Department that a major goal of the Castro regime is to export its Communist revolution to the rest of Latin America.¹⁴ The United States and other members of the Organization of American States have determined that travel between Cuba and the other countries of the Western Hemisphere is an important element in the spreading of subversion, and many have there-

¹² *Aptheker v. Secretary of State*, *supra*, at 505-514; *Shachtman v. Dulles*, 96 U. S. App. D. C. 287, 290 (opinion of the court), 293 (Edgerton, J., concurring), 225 F. 2d 938, 941, 944 (1955); cf. *Bolling v. Sharpe*, 347 U. S. 497, 499-500; *Freedom to Travel* (Report of Special Committee to Study Passport Procedures, Ass'n of the Bar of the City of New York), pp. 53, 55 (1958); Chafee, *Three Human Rights in the Constitution of 1787*, p. 192 (1956).

¹³ Compare *Kent v. Dulles*, *supra*; *Aptheker v. Secretary of State*, *supra*; Universal Declaration of Human Rights, Art. 13 (quoted, S. Doc. No. 123, 81st Cong., 1st Sess., p. 1157); *Korematsu v. United States*, 323 U. S. 214, 218.

¹⁴ Cuba, Dept. State Pub. No. 7171, pp. 25-36 (1961); see also Ball, U. S. Policy Toward Cuba, Dept. State Pub. No. 7690, p. 3 (1964); 47 Dept. State Bull. 598-600.

fore undertaken measures to discourage such travel.¹⁵ It also cannot be forgotten that in the early days of the Castro regime, United States citizens were arrested and imprisoned without charges. We think, particularly in view of the President's statutory obligation to "use such means, not amounting to acts of war, as he may think necessary and proper" to secure the release of an American citizen unjustly deprived of his liberty by a foreign government,¹⁶ that the Secretary has justifiably concluded that travel to Cuba by American citizens might involve the Nation in dangerous international incidents, and that the Constitution does not require him to validate passports for such travel.

The right to travel *within* the United States is of course also constitutionally protected, cf. *Edwards v. California*, 314 U. S. 160. But that freedom does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with

¹⁵ See Report of the Special Committee to Study Resolutions II.1 and VIII of the Eighth Meeting of Consultation of Ministers of Foreign Affairs, OEA/Ser. G/IV, pp. 14-16 (1963); 48 Dept. State Bull. 517, 719; Resolution I, Final Act, Ninth Meeting of Consultation of Ministers of Foreign Affairs, OEA/Ser. F/II.9 (1964).

¹⁶ R. S. § 2001, 22 U. S. C. § 1732 (1958 ed.), provides :

"Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress."

the safety and welfare of the area or the Nation as a whole. So it is with international travel. That the restriction which is challenged in this case is supported by the weightiest considerations of national security is perhaps best pointed up by recalling that the Cuban missile crisis of October 1962 preceded the filing of appellant's complaint by less than two months.

Appellant also asserts that the Secretary's refusal to validate his passport for travel to Cuba denies him rights guaranteed by the First Amendment. His claim is different from that which was raised in *Kent v. Dulles, supra*, and *Aptheker v. Secretary of State, supra*, for the refusal to validate appellant's passport does not result from any expression or association on his part; appellant is not being forced to choose between membership in an organization and freedom to travel. Appellant's allegation is, rather, that the "travel ban is a direct interference with the First Amendment rights of citizens to travel abroad so that they might acquaint themselves at first hand with the effects abroad of our Government's policies, foreign and domestic, and with conditions abroad which might affect such policies." We must agree that the Secretary's refusal to validate passports for Cuba renders less than wholly free the flow of information concerning that country. While we further agree that this is a factor to be considered in determining whether appellant has been denied due process of law,¹⁷ we cannot accept the contention of appellant that it is a First Amendment right which is involved. For to the extent that the Secretary's refusal to validate passports for Cuba acts as an inhibition (and it would be unrealistic to assume that it does not), it is an inhibition of action. There are few restrictions

¹⁷ Indeed, it was precisely this sort of consideration which led us to hold in *Kent v. Dulles, supra*, at 126-127, that the right to travel is protected by the Fifth Amendment. See also *Aptheker v. Secretary of State, supra*, at 520 (DOUGLAS, J., concurring).

1

Opinion of the Court.

on action which could not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House diminishes the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right. The right to speak and publish does not carry with it the unrestrained right to gather information.

Finally, appellant challenges the 1926 Act on the ground that it does not contain sufficiently definite standards for the formulation of travel controls by the Executive. It is important to bear in mind, in appraising this argument, that because of the changeable and explosive nature of contemporary international relations, and the fact that the Executive is immediately privy to information which cannot be swiftly presented to, evaluated by, and acted upon by the legislature, Congress—in giving the Executive authority over matters of foreign affairs—must of necessity paint with a brush broader than that it customarily wields in domestic areas.

“Practically every volume of the United States Statutes contains one or more acts or joint resolutions of Congress authorizing action by the President in respect of subjects affecting foreign relations, which either leave the exercise of the power to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs.” *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 324.

This does not mean that simply because a statute deals with foreign relations, it can grant the Executive totally unrestricted freedom of choice. However, the 1926 Act contains no such grant. We have held, *Kent v. Dulles*, *supra*, and reaffirm today, that the 1926 Act must take its

content from history: it authorizes only those passport refusals and restrictions "which it could fairly be argued were adopted by Congress in light of prior administrative practice." *Kent v. Dulles, supra*, at 128. So limited, the Act does not constitute an invalid delegation.

IV.

Appellant's complaint sought not only an order compelling the Secretary of State to validate his passport for travel to Cuba, but also a declaration that appellant "is entitled under the Constitution and laws of the United States to travel to Cuba," and an order enjoining the Secretary and the Attorney General from interfering with such travel. Read in the context of the arguments appellant makes here, it appears that the intent of the complaint was that these latter prayers should be considered only in the event that the court decided that the Secretary lacks authority to refuse to validate appellant's passport for Cuba. However, the complaint can also be read to incorporate a request that, even if the court should find that the Secretary does have such authority, it go on to decide whether appellant can be criminally prosecuted, under § 215 (b) of the Immigration and Nationality Act of 1952, 66 Stat. 190, 8 U. S. C. § 1185 (b) (1958 ed.), for travel in violation of an area restriction. That section provides:

"After such proclamation as is provided for in subsection (a) has been made and published and while such proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport."

1

Opinion of the Court.

A proclamation of the sort referred to was issued in 1953 and remains on the books. Pres. Proc. No. 3004, 67 Stat. c31; cf. Exec. Order No. 11037, 3 CFR 621 (1959-1963 Comp.). We hold that on either interpretation of the complaint, the court below was correct in refusing to reach the issue of criminal liability.

There are circumstances under which courts properly make exceptions to the general rule that equity will not interfere with the criminal processes, by entertaining actions for injunction or declaratory relief in advance of criminal prosecution. See *Evers v. Dwyer*, 358 U. S. 202; *Terrace v. Thompson*, 263 U. S. 197. However, the Declaratory Judgment Act, 28 U. S. C. § 2201 (1958 ed.), "is an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant." *Public Serv. Comm'n v. Wycoff Co.*, 344 U. S. 237, 241. The complaint filed in this case does not specify the sort of travel to Cuba appellant has in mind—*e. g.*, whether he plans to proceed to Cuba directly or travel there via one or more other countries. Nor can we tell from the papers filed whether the Government will, in the event appellant journeys to Cuba, charge him under § 215 (b) with leaving the United States on a carrier bound for Cuba with a passport not validated for Cuba; leaving the United States with such a passport with the intent of traveling to Cuba before he returns home; leaving the United States with such a passport on a journey which in fact takes him to Cuba; re-entering the United States with such a passport after having visited Cuba; some other act—or whether it will charge him at all.¹⁸ Whether

¹⁸ The Solicitor General does not state with particularity the Government's position as to the reach of § 215 (b) with regard to area restrictions; he simply asserts that § 215 (b) "confirms the authority of the Secretary to impose area restrictions in the issuance of passports and prohibits travel in violation thereof." Brief for Appellees, p. 56; see also *id.*, at 10-11, 60-61.

BLACK, J., dissenting.

381 U. S.

each or any of these gradations of fact or charge would make a difference as to criminal liability is an issue on which the District Court wisely took no position. Nor do we. For if we are to avoid rendering a series of advisory opinions, adjudication of the reach and constitutionality of § 215 (b) must await a concrete fact situation. Compare *Federation of Labor v. McAdory*, 325 U. S. 450.

The District Court therefore correctly dismissed the complaint, and its judgment is

Affirmed.

MR. JUSTICE BLACK, dissenting.

Article I of the Constitution provides that "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." (Emphasis supplied.) I have no doubt that this provision grants Congress ample power to enact legislation regulating the issuance and use of passports for travel abroad, unless the particular legislation is forbidden by some specific constitutional prohibition such as, for example, the First Amendment. See *Aptheker v. Secretary of State*, 378 U. S. 500, 517 (concurring opinion); cf. *Kent v. Dulles*, 357 U. S. 116. Since Article I, however, vests "All legislative Powers" in the Congress, and no language in the Constitution purports to vest any such power in the President, it necessarily follows, if the Constitution is to control, that the President is completely devoid of power to make laws regulating passports or anything else. And he has no more power to make laws by labeling them regulations than to do so by calling them laws. Like my Brother GOLDBERG, I cannot accept the Government's argument that the President has "inherent" power to make regulations governing the issuance and use of passports. *Post*, pp. 28-30. We emphatically and I think properly rejected a similar argument advanced to support a seizure of the Nation's steel com-

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BLACK, J., dissenting.

panies by the President. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579. And regulation of passports, just like regulation of steel companies, is a law-making—not an executive, law-enforcing—function.

Nor can I accept the Government's contention that the passport regulations here involved are valid "because the Passport Act of 1926 in unequivocal words delegates to the President and Secretary a general discretionary power over passports" That Act does provide that "the Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries . . . under such rules as the President shall designate and prescribe" ¹ Quite obviously, the Government does not exaggerate in saying that this Act "does not provide any specific standards for the Secretary" and "delegates to the President and Secretary a general discretionary power over passports"—a power so broad, in fact, as to be marked by no bounds except an unlimited discretion. It is plain therefore that Congress has not itself passed a law regulating passports; it has merely referred the matter to the Secretary of State and the President in words that say in effect, "We delegate to you our constitutional power to make such laws regulating passports as you see fit." The Secretary of State has proceeded to exercise the power to make laws regulating the issuance of passports by declaring that he will issue them for Cuba only to "persons whose travel may be regarded as being in the best interests of the United States," as he views those interests. For Congress to attempt to delegate such an undefined law-making power to the Secretary, the President, or both, makes applicable to this 1926 Act what Mr. Justice Cardozo said about the National Industrial Recovery Act: ² "This is delegation running riot. No such plenitude of power is susceptible of transfer."

¹ 44 Stat. 887, 22 U. S. C. § 211a (1958 ed.).

² Act of June 16, 1933, 48 Stat. 195.

A. L. A. Schechter Poultry Corp. v. United States, 295 U. S. 495, 553 (concurring opinion). See also *Panama Ref. Co. v. Ryan*, 293 U. S. 388; cf. *Kent v. Dulles*, 357 U. S. 116, 129.

Our Constitution has ordained that laws restricting the liberty of our people can be enacted by the Congress and by the Congress only. I do not think our Constitution intended that this vital legislative function could be farmed out in large blocks to any governmental official, whoever he might be, or to any governmental department or bureau, whatever administrative expertise it might be thought to have. The Congress was created on the assumption that enactment of this free country's laws could be safely entrusted to the representatives of the people in Congress, and to no other official or government agency. The people who are called on to obey laws have a constitutional right to have them passed only in this constitutional way. This right becomes all the more essential when as here the person called on to obey may be punishable by five years' imprisonment and a \$5,000 fine if he dares to travel without the consent of the Secretary or one of his subordinates.³ It is irksome enough for one who wishes to travel to be told by the Congress, the constitutional lawmaker with power to legislate in this field, that he cannot go where he wishes. It is bound to be far more irritating—and I do not think the authors of our Constitution, who gave "All" legislative power to Congress, intended—for a citizen of this country to be told that he cannot get a passport because Congress has given an unlimited discretion to an executive official (or viewed practically, to his subordinates) to decide when and where he may go. I repeat my belief that Congress has ample power to regulate foreign travel. And of course, the fact that there may be good and adequate reasons for Congress

³ 66 Stat. 190, 8 U. S. C. § 1185 (1964 ed.).

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DOUGLAS, J., dissenting.

to pass such a law is no argument whatever for holding valid a law written not by the Congress but by executive officials. See *Panama Ref. Co. v. Ryan*, *supra*, 293 U. S., at 420. I think the 1926 Act gives the lawmaking power of Congress to the Secretary and the President and that it therefore violates the constitutional command that "All" legislative power be vested in the Congress. I would therefore reverse the judgment.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE GOLDBERG concurs, dissenting.

Appellant, the holder of a valid United States passport, requested that his passport be validated for travel to Cuba: he wished to make the trip "to satisfy my curiosity about the state of affairs in Cuba and to make me a better informed citizen." The need for validation arose from the Department of State's prior elimination of Cuba from the area for which passports were not required, 22 CFR § 53.3 (b), and from its issuance of a public notice declaring all outstanding passports invalid for travel to Cuba unless specifically endorsed for such travel under the authority of the Secretary of State, 26 Fed. Reg. 492. A companion press release of January 16, 1961, stated that such travel would be permitted by "persons whose travel may be regarded as being in the best interests of the United States, such as newsmen or businessmen with previously established business interests." The Passport Office denied appellant's request for validation. Referring to the press release, the Deputy Director of the Passport Office informed appellant that it was "obvious that your present purpose of visiting Cuba does not meet the standards for validation of your passport."

We held in *Kent v. Dulles*, 357 U. S. 116, that the right to travel overseas, as well as at home, was part of the citizen's liberty under the Fifth Amendment. That conclusion was not an esoteric one drawn from the blue. It

reflected a judgment as to the peripheral rights of the citizen under the First Amendment. The right to know, to converse with others, to consult with them, to observe social, physical, political and other phenomena abroad as well as at home gives meaning and substance to freedom of expression and freedom of the press. Without those contacts First Amendment rights suffer. That is why in *Kent v. Dulles*, *supra*, we said that freedom of movement has "large social values." *Id.*, at 126.

The ability to understand this pluralistic world, filled with clashing ideologies, is a prerequisite of citizenship if we and the other peoples of the world are to avoid the nuclear holocaust. The late Pope John XXIII in his famous encyclical *Pacem in Terris* stated the idea eloquently:

"Men are becoming more and more convinced that disputes which arise between States should not be resolved by recourse to arms, but rather by negotiation.

"It is true that on historical grounds this conviction is based chiefly on the terrible destructive force of modern arms; and it is nourished by the horror aroused in the mind by the very thought of the cruel destruction and the immense suffering which the use of those armaments would bring to the human family; and for this reason it is hardly possible to imagine that in the atomic era war could be used as an instrument of justice.

"Nevertheless, unfortunately, the law of fear still reigns among peoples, and it forces them to spend fabulous sums for armaments: not for aggression, they affirm—and there is no reason for not believing them—but to dissuade others from aggression.

"There is reason to hope, however, that by meeting and negotiating, men may come to discover better the bonds that unite them together, deriving from

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DOUGLAS, J., dissenting.

the human nature which they have in common; and that they may also come to discover that one of the most profound requirements of their common nature is this: that between them and their respective peoples it is not fear which should reign but love, a love which tends to express itself in a collaboration that is loyal, manifold in form and productive of many benefits."

He also said:

"From the fact that human beings are by nature social, there arises the right of assembly and association."

Since we deal with rights peripheral to the enjoyment of First Amendment guarantees, restrictive legislation must be "narrowly drawn" (*Cantwell v. Connecticut*, 310 U. S. 296, 307) to meet a precise evil. Only last Term, in *Aptheker v. Secretary of State*, 378 U. S. 500, we reaffirmed that when we struck down a provision of the Subversive Activities Control Act of 1950 (64 Stat. 987) because it "too broadly and indiscriminately" restricted the right to travel. *Id.*, at 505. We should do the same here.

I agree that there are areas to which Congress can restrict or ban travel. Pestilences may rage in a region making it necessary to protect not only the traveler but those he might infect on his return. A theatre of war may be too dangerous for travel. Other like situations can be put. But the only so-called danger present here is the Communist regime in Cuba. The world, however, is filled with Communist thought; and Communist regimes are on more than one continent. They are part of the world spectrum; and if we are to know them and understand them, we must mingle with them, as Pope John said. Keeping alive intellectual intercourse between opposing groups has always been important and perhaps was never more important than now.

The First Amendment presupposes a mature people, not afraid of ideas. The First Amendment leaves no room for the official, whether truculent or benign, to say nay or yea because the ideas offend or please him or because he believes some political objective is served by keeping the citizen at home or letting him go. Yet that is just what the Court's decision today allows to happen. We have here no congressional determination that Cuba is an area from which our national security demands that Americans be excluded. Nor do we have a congressional authorization of the Executive to make such a determination according to standards fixed by Congress. Rather we have only the claim that Congress has painted with such a "broad brush" that the State Department can ban travel to Cuba simply because it is pleased to do so. By permitting this, the Court ignores the "familiar and basic principle," *Aptheker v. Secretary of State*, *supra*, at 508, that "a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama*, 377 U. S. 288, 307.

As I have said, the right to travel is at the periphery of the First Amendment, rather than at its core, largely because travel is, of course, more than speech: it is speech brigaded with conduct. "Conduct remains subject to regulation for the protection of society. . . . [But i]n every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." *Cantwell v. Connecticut*, *supra*, at 304. Restrictions on the right to travel in times of peace should be so particularized that a First Amendment right is not precluded unless some clear countervailing national interest stands in the way of its assertion.*

*Time after time this Court has been alert to protect First Amendment rights which are exercised in a context of overt action which

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GOLDBERG, J., dissenting.

MR. JUSTICE GOLDBERG, dissenting.

Last year approximately 2,750,000 Americans traveled abroad. More than 1,100,000 passports were issued or renewed, nearly 4,000 of which were obtained by journalists.¹ This phenomenal amount of travel not only demonstrates our curiosity about things foreign, and the increasing importance of, and indeed often necessity for, travel, but it also reflects the long history of freedom of movement which Americans have enjoyed. Since the founding of the Republic our Government has encouraged such travel.² For example, in 1820, when John Quincy Adams issued a passport to one Luther Bradish he certified that Bradish was about to visit foreign countries "with the view of gratifying a commendable curiosity."³ In 1962, however, when appellant requested that his passport be validated so that he might travel to Cuba "to satisfy my curiosity about the state of affairs in Cuba and to make me a better informed citizen," his request was

is subject to governmental regulation. "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton v. Tucker*, 364 U. S. 479, 488. See, e. g., *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. State*, 308 U. S. 147; *Cantwell v. Connecticut*, *supra*; *Martin v. Struthers*, 319 U. S. 141; *Saia v. New York*, 334 U. S. 558; *Kunz v. New York*, 340 U. S. 290; *Schwartz v. Board of Bar Examiners*, 353 U. S. 232, 239; *Louisiana ex rel. Gremillion v. NAACP*, 366 U. S. 293; *NAACP v. Button*, 371 U. S. 415; *Aptheker v. Secretary of State*, *supra*.

¹ U. S. Dept. of State, Summary of Passport Statistics Jan. 1965.

² Very recently the President has requested citizens voluntarily and temporarily to limit their travel abroad because of balance of payments difficulties.

³ See U. S. Dept. of State, The American Passport 10 (1898).

denied upon the basis of Department of State regulations, issued under the alleged authority of an Executive Order, restricting travel to Cuba.

Appellant attacks the limitation imposed upon the validity of his passport as beyond the inherent power of the Executive, unauthorized by Congress, and beyond the constitutional authority of either the Executive or Congress. I agree with the Court that Congress has the constitutional power to impose area restrictions on travel, consistent with constitutional guarantees, and I reject appellant's arguments to the contrary. With all deference, however, I do not agree with the Court's holding that Congress has exercised this power. Moreover, I do not believe that the Executive has inherent authority to impose area restrictions in time of peace. I would hold, under the principles established by prior decisions of this Court that inasmuch as Congress has not authorized the Secretary to impose area restrictions, appellant was entitled to a passport valid for travel to Cuba.

I. INHERENT AUTHORITY OF THE EXECUTIVE.

This Court has recognized that the right to travel abroad is "an important aspect of the citizen's 'liberty'" guaranteed by the Due Process Clause of the Fifth Amendment. *Kent v. Dulles*, 357 U. S. 116, 127. In *Aptheker v. Secretary of State*, 378 U. S. 500, 517, we reaffirmed that "freedom of travel is a constitutional liberty closely related to rights of free speech and association." As nations have become politically and commercially more dependent upon one another and foreign policy decisions have come to have greater impact upon the lives of our citizens, the right to travel has become correspondingly more important. Through travel, by private citizens as well as by journalists and governmental officials, information necessary to the making of informed decisions can be obtained. And, under our constitutional system,

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GOLDBERG, J., dissenting.

ultimate responsibility for the making of informed decisions rests in the hands of the people. As Professor Chafee has pointed out, "An American who has crossed the ocean is not obliged to form his opinions about our foreign policy merely from what he is told by officials of our government or by a few correspondents of American newspapers. Moreover, his views on domestic questions are enriched by seeing how foreigners are trying to solve similar problems. In many different ways direct contact with other countries contributes to sounder decisions at home." Chafee, *Three Human Rights in the Constitution of 1787, 195-196* (1956).

The constitutional basis of the right to travel and its importance to decision-making in our democratic society led this Court in *Kent v. Dulles, supra*, to conclude that "[i]f that 'liberty' is to be regulated, it must be pursuant to the law-making functions of the Congress." 357 U. S., at 129. Implicit in this statement, and at the very core of the holding in *Kent v. Dulles*, is a rejection of the argument there advanced and also made here by the Government that the Executive possesses an inherent power to prohibit or impede travel by restricting the issuance of passports. The Court in *Kent* expressly recognized that a passport is not only of great value, but also is necessary ⁴ to leave this country and to travel to most parts of the world. *Kent v. Dulles, supra*, at 121. The Court demonstrates in *Kent v. Dulles*, and I shall show in detail below, that there is no long-standing and consistent history of the

⁴ Except for the years 1918 to 1921 and since 1941 American law did not require a passport for travel abroad. Currently, however, § 215 (b) of the Immigration and Nationality Act of 1952, 66 Stat. 190, 8 U. S. C. § 1185 (b) (1958 ed.), makes it unlawful, after the proclamation of a national emergency "to depart from or enter, or attempt to depart from or enter, the United States . . . [without] a valid passport." The Court expresses no views nor do I upon the validity or proper interpretation of this provision, which is currently involved in other litigation not now before us.

exercise of an alleged inherent Executive power to limit travel or restrict the validity of passports. In view of the constitutional basis of the right to travel, the legal and practical necessity for passports, and the absence of a long-standing Executive practice of imposing area restrictions, I would rule here, as this Court did in *Kent v. Dulles*, that passport restrictions may be imposed only when Congress makes provision therefor "in explicit terms," *Kent v. Dulles, supra*, at 130, consistent with constitutional guarantees. Cf. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579. I would hold expressly that the Executive has no inherent authority to impose area restrictions in time of peace.

II. STATUTORY AUTHORITY.

I cannot accept the Court's view that authority to impose area restrictions was granted to the Executive by Congress in the Passport Act of 1926, 44 Stat. 887, 22 U. S. C. § 211a (1958 ed.), which provides, "The Secretary of State may grant and issue passports . . . under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports." I do not believe that the legislative history of this provision, or administrative practice prior to its most recent re-enactment in 1926 will support the Court's interpretation of the statute. Moreover, the nature of the problem presented by area restrictions makes it unlikely that authority to impose such restrictions was granted by Congress in the course of enacting such a broad general statute. In my view, as the history I shall relate establishes, this statute was designed solely to centralize authority to issue passports in the hands of the Secretary of State in order to overcome the abuses and chaos caused by the fact that prior to the passage of the statute numerous unauthorized persons issued passports and travel documents.

A. *The Legislative History.*

The 1926 provision has its origin in the Act of August 18, 1856, 11 Stat. 52, 60-61. Prior to 1856 the issuance of passports was not regulated by law. Governors of States, local mayors, and even notaries public issued documents which served as passports. This produced confusion abroad. In 1835 Secretary of State Forsyth wrote:

"It is within the knowledge of the Department that the diplomatic agents of foreign governments in the United States have declined authenticating acts of governors or other State or local authorities; and foreign officers abroad usually require that passports granted by such authorities shall be authenticated by the ministers or consuls of the United States. Those functionaries, being thus called upon, find themselves embarrassed between their desire to accommodate their fellow-citizens and their unwillingness to certify what they do not officially know; and the necessity of some uniform practice, which may remove the difficulties on all sides, has been strongly urged upon the Department." III Moore, *International Law Digest* 862-863 (1906).

Despite administrative efforts to curb the flow of state and local passports, Secretary of State Marcy wrote in 1854:

"To preserve proper respect for our passports it will be necessary to guard against frauds as far as possible in procuring them. I regret to say that local magistrates or persons pretending to have authority to issue passports have imposed upon persons who go abroad with these spurious papers. Others, again, who know that they are not entitled to passports—not being citizens of the United States—seek to get these fraudulent passports, thinking that they will protect them while abroad." III Moore, *op. cit. supra*, at 863.

As is noted in an official history of the State Department. "The lack of legal provision on the subject [of passports] led to gross abuses, and 'the impositions practiced upon the illiterate and unwary by the fabrication of worthless passports' [IX Op. Atty. Gen. 350] led finally to the passage of the Act of August 18, 1856." The Department of State of the United States: Its History and Functions 178 (1893). This Act provided that "the Secretary of State shall be authorized to grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify any such passport." 11 Stat. 60. That Act made it a crime for a person to issue a passport who was not authorized to do so. This provision was re-enacted on July 3, 1926, 44 Stat. 887, in substantially identical form.⁵ There is no indication in the legislative history either at the time the Act was originally passed in 1856 or when it was re-enacted, that it was meant to serve any purpose other than that of centralizing the authority to issue passports in the hands of the Secretary of State so as to eliminate abuses in their issuance. Thus, in my view, the authority to make rules, granted by the statute to the Executive, extends only to the promulgation of rules designed to carry out this statutory purpose.

⁵ The following changes have been made in the wording of this provision of the statute between 1856 and the present: When the statute was placed in the Revised Statutes of 1874, the words "shall be authorized to" were replaced by "may." R. S. § 4075. On June 14, 1902, the provision was amended to increase the list of those whom the Secretary could cause to grant, issue and verify passports in foreign countries by adding the words "and by such chief or other executive officer of the insular possessions of the United States." 32 Stat. 386. When the provision was re-enacted in 1926, the list of those whom the Secretary could cause to grant, issue and verify pass-

B. *The Administrative Practice.*

The administrative practice of the State Department prior to 1926 does not support the Court's view that when Congress re-enacted the 1856 provision in 1926 it intended to grant the Executive authority to impose area restrictions. Prior to the First World War the State Department had never limited the validity of passports for travel to any particular area. In fact, limitations upon travel had been imposed only twice. During the War of 1812 Congress specifically provided by statute that persons could not cross enemy lines without a passport, and in 1861 at the beginning of the Civil War the Secretary of State ruled that passports would not be issued to persons whose loyalty was in doubt. These restrictions were imposed in time of war. The first, restricting the area of travel, evidently was thought to require a specific statutory enactment by Congress, and the second did not limit the area of travel, but, rather, limited the persons to whom passports would be issued.⁶ Until 50 years ago peacetime limitations upon the right of a citizen to travel were virtually unknown, see Chafee, *op. cit. supra*, at 193; Jaffe, *The Right to Travel: The Passport Problem*, 35 *Foreign Affairs* 17, and it was in this atmosphere that the Act of 1856 was passed and its re-enactment prior to 1926 took place.

The only area restrictions imposed between 1856 and 1926 arose out of the First World War. Although Amer-

ports in foreign countries was modified by substituting for the words "by such diplomatic or consular officers of the United States," the words "by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate," and the words "such passports" were substituted for the words "any such passport." 44 Stat. 887.

⁶ See *Kent v. Dulles*, *supra*, at 128, where the Court implies that regulation of travel based upon disloyalty to the country during wartime presents quite a different question from such regulation in time of peace.

GOLDBERG, J., dissenting.

381 U.S.

icans were not required by law to carry passports in 1915, certain foreign countries insisted that Americans have them. American Consulates and Embassies abroad were therefore authorized to issue *emergency* passports after the outbreak of the war, and in 1915 the Secretary of State telegraphed American Ambassadors and Ministers in France, Germany, Great Britain, Italy, the Netherlands, and Denmark: "Do not issue emergency passports for use in Belgium [then occupied by German armed forces] unless applicants obliged to go thither by special exigency or authorized by Red Cross or Belgian Relief Commission." See III Hackworth, *Digest of International Law* 525-526 (1942). After the United States entered World War I travel to areas of belligerency and to enemy countries was restricted. Passports were marked not valid for travel to these areas, and Congress provided by statute that passports were necessary in order to leave or enter the United States. The congressional Act requiring passports for travel expired in 1921, and soon after the official end of the war passports were marked valid for travel to all countries. See III Hackworth, *supra*, at 527; Hearings before the Senate Committee on Foreign Relations on Department of State Passport Policies, 85th Cong., 1st Sess., 64 (hereafter Senate Hearings). Thus in 1926 freedom of travel was as complete as prior to World War I. In this atmosphere Congress re-enacted, in virtually identical terms, the 1856 statute, the sole purpose of which, as I have already noted, was to centralize passport issuance. Congress in doing so did not indicate the slightest intent or desire to enlarge the authority of the Executive to regulate the issuance of passports. Surely travel restrictions imposed while the United States was at war and a single telegram instructing ministers to deny emergency passports for a brief time in 1915 for travel to a theatre of war, do not show that Congress, by re-enacting the 1856 Act in 1926, intended to authorize the Execu-

1

GOLDBERG, J., dissenting.

tive to impose area restrictions upon travel in peacetime whenever the Executive believed such restrictions might advance American foreign policy. The long tradition of freedom of movement, the fact that no passport area restrictions existed prior to World War I, the complete absence of any indication in the legislative history that Congress intended to delegate such sweeping authority to the Executive all point in precisely the opposite direction.⁷

In *Kent v. Dulles, supra*, the Court held that the 1926 Act did not authorize the Secretary of State to withhold passports from persons because of their political beliefs or associations. Although it was argued that prior to

⁷ The Court also argues that State Department imposition of area restrictions after 1926 shows that the Act granted power to impose such restrictions, for a consistent administrative interpretation must be given weight by the courts. *Ante*, at 11. See *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294. With all deference, I do not find a consistent administrative interpretation of the 1926 Act. While area restrictions have been imposed by the Executive from time to time since 1926, see Senate Hearings 64-65, the Executive has also indicated doubts as to its authority to restrict passports. In 1958 the President formally asked Congress for "clear statutory authority to prevent Americans from using passports for travel to areas where there is no means of protecting them, or where their presence would conflict with our foreign policy objectives." H. R. Doc. No. 417, 85th Cong., 2d Sess. In 1957 the Report of the Commission on Government Security expressly recommended that it be made unlawful "for any citizen of the United States to travel to any country in which his passport is declared to be invalid." S. Doc. No. 64, 85th Cong., 1st Sess., 475. Moreover, when the Department of State announced limitations on the use of passports for travel to Red China, the accompanying press release stated that the restrictions did not forbid American travel to the areas restricted. See Senate Hearings 40; Report of the Association of the Bar of the City of New York, *Freedom to Travel* 70 (1958). In any event I believe that the evidence set out above that Congress did not mean the 1926 Act to authorize the imposition of area restrictions is sufficiently strong so that it is not overcome by the fact that after 1926 the Department on occasion asserted that it had an inherent power to impose such restrictions.

GOLDBERG, J., dissenting.

381 U.S.

1926 the Secretary had withheld passports from Communists and other suspected subversives and that such an administrative practice had been adopted by Congress, the Court found that the evidence of such a practice was insufficient to warrant the conclusion that it had congressional authorization.

Yet in *Kent v. Dulles* the Government pointed to scattered Executive interpretations showing that upon occasion the State Department believed that it had the authority in peacetime to withhold passports from persons deemed by the Department to hold subversive beliefs. In 1901 Attorney General Knox advised the Secretary of State that a passport might be withheld from "an avowed anarchist." 23 Op. Atty. Gen. 509, 511. Orders promulgated by the Passport Office periodically have required denial of passports to "revolutionary radicals." See Passport Office Instructions of May 4, 1921. A State Department memorandum of May 29, 1956, in summarizing the Department's passport policy, states that after the Russian Revolution "passports were refused to American Communists who desired to go abroad for indoctrination, instruction, etc. This policy was continued until 1931" ⁸

These isolated instances of the assumption of authority to refuse passports to persons thought subversive were held insufficient to show that Congress in 1926 intended to grant the Secretary of State discretionary authority to deny passports to persons because of their political beliefs, *Kent v. Dulles, supra*, at 128. This case presents an even more attenuated showing of administrative practice, for there is revealed only one isolated instance of a peacetime area restriction and this closely connected with World War I. Clearly this single instance is insufficient to show

⁸ See the Report of the Commission on Government Security 470, 471 (1957).

1

GOLDBERG, J., dissenting.

that Congress intended to authorize the Secretary to impose peacetime area restrictions.

Moreover, just as the more numerous instances of restriction on travel because of political beliefs and associations in wartime were insufficient to show that Congress intended to grant the Secretary authority to curtail such travel in time of peace, see *Kent v. Dulles*, *supra*, at 128, so here the fact that area restrictions were imposed during World War I does not show that Congress intended to grant the Secretary authority to impose such restrictions in time of peace. In time of war and in the exercise of the war power, restrictions may be imposed that are neither permissible nor tolerable in time of peace. See *Kent v. Dulles*, *supra*, at 128; cf. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579. But see *Kennedy v. Mendoza-Martinez*, 372 U. S. 144. Thus even if the State Department's wartime practice should lead to the conclusion that area restrictions in time of war were sanctioned, it surely does not show that Congress wished to authorize similar curtailment of the right to travel in time of peace.⁹

While the Court intimates that *Kent v. Dulles* is distinguishable from the present case because in *Kent v. Dulles* passports were denied on the basis of the applicants' political beliefs, *ante*, at 13, I find little in the logic of that opinion to support such a distinction. The Court in *Kent v. Dulles* based its conclusions that the Executive does not have an inherent power to impose peacetime passport restrictions and that Congress did not delegate such authority to the Executive on the history of

⁹ Although the United States has severed its diplomatic ties with the Castro government, and, as the Court correctly points out, *ante*, at 14-15, justifiably regards the Castro regime as hostile to this country, the United States is not in a state of war with Cuba. See *Banco Nacional de Cuba v. Sabbatino*, 376 U. S. 398, 410.

GOLDBERG, J., dissenting.

381 U.S.

passport restrictions and the constitutional basis of the right to travel. While the Court there mentions that it is dealing "with beliefs, with associations, with ideological matters," 357 U. S., at 130, a reading of the opinion clearly reveals that its holding does not turn upon such factors. Moreover, the importance of travel to the gathering of information, an activity closely connected with the First Amendment and a right asserted here, seems to be a major reason for the Court's holding in *Aptheker* and *Kent* that the right to travel is afforded constitutional protection. *Kent v. Dulles* thus seems not only relevant, but controlling, in the case presented here.

*C. The Statute's Inapplicability to the Problem
of Area Restrictions.*

The Court's interpretation of the 1926 Passport Act not only overlooks the legislative history of the Act and departs from the letter and spirit of this Court's decisions in *Kent v. Dulles*, *supra*, and *Aptheker v. Secretary of State*, *supra*, but it also implies that Congress resolved, through a sweeping grant of authority, the many substantial problems involved in curtailing a citizen's right to travel because of considerations of national policy. People travel abroad for numerous reasons of varying importance. Some travel for pleasure, others for business, still others for education. Foreign correspondents and lecturers must equip themselves with firsthand information. Scientists and scholars gain considerably from interchanges with colleagues in other nations. See Chafee, *op. cit. supra*, at 195.

Just as there are different reasons for people wanting to travel, so there are different reasons advanced by the Government for its need to impose area restrictions. These reasons vary. The Government says restrictions are imposed sometimes because of political differences with countries, sometimes because of unsettled conditions, and sometimes, as in this case, as part of a program, under-

1 GOLDBERG, J., dissenting.

taken together with other nations, to isolate a hostile foreign country such as Cuba because of its attempts to promote the subversion of democratic nations. See Senate Hearings 63-69. The Department of State also has imposed different types of travel restrictions in different circumstances. All newsmen, for example, were prohibited from traveling to China, see Senate Hearings 67, but they have been allowed to visit Cuba. See Public Notice 179 (Jan. 16, 1961), 26 Fed. Reg. 492; Press Release No. 24, issued by the Secretary of State, Jan. 16, 1961. In view of the different types of need for travel restrictions, the various reasons for traveling abroad, the importance and constitutional underpinnings of the right to travel and the right of a citizen and a free press to gather information about foreign countries, it cannot be presumed that Congress, without focusing upon the complex problems involved, resolved them by adopting a broad and sweeping statute which, in the Court's view, confers unlimited discretion upon the Executive, and which makes no distinctions reconciling the rights of the citizen to travel with the Government's legitimate needs. I do not know how Congress would deal with this complex area were it to focus on the problems involved, or whether, for example, in light of our commitment to freedom of the press, Congress would consent under any circumstances to prohibiting newsmen from traveling to foreign countries. But, faced with a complete absence of legislative consideration of these complex issues, I would not presume that Congress, in 1926, issued a blanket authorization to the Executive to impose area restrictions and define their scope and duration, for the nature of the problem seems plainly to call for a more discriminately fashioned statute.

III. CONCLUSION.

In my view it is clear that Congress did not mean the 1926 Act to authorize the Executive to impose area re-

strictions in time of peace, and, with all deference, I disagree with the Court's holding that it did. I agree with the Court that Congress may authorize the imposition of travel restrictions consistent with constitutional guarantees, but I find it plain and evident that Congress has never considered and resolved the problem. After consideration Congress might determine that broad general authority should be delegated to the Secretary of State, or it might frame a narrower statute. I believe that here, as in other areas, appropriate delegation is constitutionally permissible where some standard for the application of delegated power is provided. See, *e. g.*, *Lichter v. United States*, 334 U. S. 742, 785. However, in light of my conclusion that the 1926 Act did not deal with area restrictions I do not find it necessary to consider the question of whether the language of the 1926 Act might constitute an unconstitutionally broad delegation of power.

In view of the different types of need for area restrictions asserted by the Government, the various reasons for travel abroad, the importance and constitutional underpinnings of the right of citizens and a free press to gather information about foreign countries—considerations which Congress did not focus upon—I would not infer, as the Court does, that Congress resolved the complex problem of area restrictions, which necessarily involves reconciling the rights of the citizen to travel with the Government's legitimate needs, by the re-enactment of a statute that history shows was designed to centralize authority to issue passports in the Secretary of State so as to prevent abuses arising from their issuance by unauthorized persons. Since I conclude that the Executive does not possess inherent power to impose area restrictions in peacetime, and that Congress has not considered the issue and granted such authority to the Executive, I would reverse the judgment of the District Court.

Syllabus.

UNITED STATES *v.* LAUB ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK.

No. 176. Argued November 16, 1966.—Decided January 10, 1967.

Appellees were indicted for conspiring to violate § 215 (b) of the Immigration and Nationality Act of 1952 by recruiting and arranging the travel to Cuba of 58 United States citizens whose passports, although otherwise valid, were not specifically endorsed for travel to Cuba. Section 215 (b) provides that during war-time or a National Emergency, and when the President finds and proclaims that such restrictions are necessary in the national interest, "it shall . . . be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid passport." The required finding and proclamation were made on January 17, 1953, and valid passports were thereafter required of United States citizens except when traveling to or from areas exempted by State Department regulations. After diplomatic relations with Cuba were severed on January 3, 1961, a State Department regulation excluded Cuba from Western Hemisphere countries exempted from the passport requirement. On the same day the Department issued a Public Notice and a press release, declaring outstanding passports invalid for travel to Cuba unless endorsed therefor. Thereafter, appellees allegedly engaged in the charged conspiracy. The District Court dismissed the indictment for failure to state an offense of conspiracy to violate § 215 (b). A direct appeal was taken to this Court. *Held*: Area restrictions upon the use of an otherwise valid passport are not criminally enforceable under § 215 (b). Pp. 479–487.

(a) "Section 215 (b) is a criminal statute. It must therefore be narrowly construed. *United States v. Wiltberger*, 5 Wheat. 76, 95–96, 105 (1820) (Marshall, C. J.)." P. 480.

(b) As the Government concedes, "Section 215 (b) does not, in so many words, prohibit violations of area restrictions" P. 480.

(c) "The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law. . . ." *Kent v. Dulles*, 357 U. S. 116, 125 (1958). P. 481.

(d) "There is no doubt that with the adoption and promulgation of the 'Excluding Cuba' regulation, a passport was required for departure from this country for Cuba and for entry into this country from Cuba. Departure for Cuba or entry from Cuba without a passport would be a violation of § 215 (b) But it does not follow that travel to Cuba with a passport which is not specifically validated for that country is a criminal offense." P. 481.

(e) Neither the State Department's Public Notice nor its press release referred to § 215 (b) or to criminal sanctions. "On the contrary, the only reference to the statutory base of the announcement . . . is a reference to the nonpenal 1926 Act . . . [which authorizes] the Secretary of State to impose area restrictions . . ." P. 482.

(f) The "unbroken tenor of State Department pronouncements on area restrictions," has cast them "exclusively in civil terms, relating to the State Department's 'safe passage' functions." P. 483.

(g) "Until these indictments . . . the State Department had consistently taken the position that there was no statute which imposed or authorized . . . prohibition" of travel in violation of area restrictions. P. 485.

(h) "The area travel restriction, requiring special validation of passports for travel to Cuba, was a valid civil regulation . . . [b]ut it was not and was not intended or represented to be an exercise of authority under § 215 (b). . . ." P. 487.

253 F. Supp. 433, affirmed.

Nathan Lewin argued the cause for the United States. With him on the brief were *Solicitor General Marshall*, *Assistant Attorney General Yeagley*, *Kevin T. Maroney* and *Robert L. Keuch*.

Leonard B. Boudin argued the cause for appellees. With him on the brief was *Victor Rabinowitz*.

MR. JUSTICE FORTAS delivered the opinion of the Court.

Appellees were indicted under 18 U. S. C. § 371 for conspiring to violate § 215 (b) of the Immigration and Nationality Act of 1952, 66 Stat. 190, 8 U. S. C.

§ 1185 (b). The alleged conspiracy consisted of recruiting and arranging the travel to Cuba of 58 American citizens whose passports, although otherwise valid, were not specifically validated for travel to that country.¹

The District Court granted appellees' motion to dismiss the indictment. Chief Judge Zavatt filed an exhaustive opinion (253 F. Supp. 433 (D. C. E. D. N. Y.)). Notice of direct appeal to this Court was filed and we noted probable jurisdiction under 18 U. S. C. § 3731 because the dismissal was "based upon the . . . construction of the statute upon which the indictment . . . is founded." We affirm. Our decision rests entirely upon our construction of the relevant statutes and regulations.

Two statutes are relevant to this case. The first is the Passport Act of 1926, 44 Stat. 887, 22 U. S. C. § 211a. This is the general statute authorizing the Secretary of State to "grant and issue passports." It is not a criminal statute. The second statute is § 215 (b) of the Immigration and Nationality Act of 1952, *supra*, under which the present indictments were brought. Section 215 (b) was enacted on June 27, 1952. It is a re-enactment of the Act of May 22, 1918 (40 Stat. 559), and the Act of June 21, 1941 (55 Stat. 252). It provides that:

"When the United States is at war or during the existence of any national emergency proclaimed by the President . . . and [when] the President shall find that the interests of the United States require that restrictions and prohibitions . . . be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, *it shall . . . (b) . . . be unlawful for any citizen of the United States to depart from or*

¹ In response to a motion for a bill of particulars, the Government alleged that the individuals concerned possessed "unexpired and unrevoked United States passports which . . . had not been specifically validated by the Secretary of State for travel to Cuba."

enter, or attempt to depart from or enter, the United States unless he bears a valid passport.” (Italics added.)

Wilful violation is subjected to a fine of not more than \$5,000 or imprisonment for five years, or both.

On January 17, 1953, President Truman made the finding and proclamation required by § 215 (b).² As a consequence, a valid passport has been required for departure and entry of United States nationals from and into the United States and its territories, except as to areas specifically exempted by regulations. The proclamation adopted the regulations which the Secretary of State had promulgated under the predecessors of § 215 (b) exempting from the passport requirement departure to or entry from “any country or territory in North, Central, or South America [including Cuba].” 22 CFR § 53.3 (b) (1958 rev.). On January 3, 1961, the United States broke diplomatic relations with Cuba. On January 16, 1961, the Deputy Under Secretary of State for Administration issued the “Excluding Cuba” amendment (22 CFR § 53.3 (1965 rev.), 26 Fed. Reg. 482). That amendment added the two words “excluding Cuba” to the phrase quoted above. Cuba was thereby included in the general requirement of a passport for departure from and entry into the United States.

On the same day, the Department of State also issued Public Notice 179, which stated that “Hereafter United States passports shall not be valid for travel to or in Cuba unless specifically endorsed for such travel under the authority of the Secretary of State. . . .” 26 Fed. Reg.

² Proclamation No. 3004, 67 Stat. c31, 3 CFR 180 (1949-1953 Comp.). The current “National Emergency” was proclaimed by President Truman on Dec. 16, 1950. Proclamation No. 2914, 64 Stat. A454, 3 CFR 99 (1949-1953 Comp.).

475

Opinion of the Court.

492. It simultaneously issued a press release announcing that:

*" . . . in view of the U. S. Government's inability, following the break in diplomatic relations between the United States and Cuba, to extend normal protective services to Americans visiting Cuba, U. S. citizens desiring to go to Cuba must until further notice obtain passports specifically endorsed by the Department of State for such travel. All outstanding passports . . . are being declared invalid for travel to Cuba unless specifically endorsed for such travel. . . . These actions have been taken in conformity with the Department's normal practice of limiting travel to those countries with which the United States does not maintain diplomatic relations."*³ (Italics added.)

In *Zemel v. Rusk*, 381 U. S. 1 (1965), the petitioner sought a declaratory judgment that the Secretary of State does not have statutory authorization to impose area restrictions on travel; that if the statute were construed to authorize the Secretary to do so, it would be an impermissible delegation of power; and that, in any event, the exercise of the power to restrict travel denied to petitioner his rights under the First and Fifth Amendments. This Court rejected petitioner's claims and sustained the Secretary's statutory power to refuse to validate passports for travel to Cuba. It found authority for area restrictions in the general passport authority vested in the Secretary of State by the 1926 Act, relying upon the successive "imposition of area restrictions during both times of war and periods of peace" before and after the enactment of the Act of 1926. 381 U. S., at

³ State Department Press Release No. 24, Jan. 16, 1961, 44 Dept. State Bull. 178. The full text is in the Appendix to this opinion.

8-9. The Court specifically declined the Solicitor General's invitation to rule also that "travel in violation of an area restriction imposed on an otherwise valid passport is unlawful under the 1952 Act." *Id.*, at 12.⁴

We now confront that question. Section 215 (b) is a criminal statute. It must therefore be narrowly construed. *United States v. Wiltberger*, 5 Wheat. 76, 95-96, 105 (1820) (Marshall, C. J.). Appellees urge that § 215 (b) must be read as a "border control" statute, requiring only that a citizen may not "depart from or enter" the United States without "a valid passport." On this basis, they argue, appellees did not conspire to violate the statute since all of those who went to Cuba departed and re-entered the United States bearing valid passports. Only if, as the Government urges, § 215 (b) can be given a broader meaning so as to encompass specific destination control—only if it is read as requiring the traveler to bear "a passport endorsed as valid for travel to the country for which he departs or from which he returns"—would appellees be guilty of any violation.

We begin with the fact, conceded by the Government, that "Section 215 (b) does not, in so many words, prohibit violations of area restrictions; it speaks, as the district court noted in the *Laub* case . . . in the language of 'border control statutes regulating departure from and entry into the United States.'" Brief for the United States, p. 11. Nevertheless, the Government requests us to sustain this criminal prosecution and reverse the District Court on the ground that somehow, "the text is broad enough to encompass departures for geographically restricted areas . . ." *Ibid.* We conclude, however, that in this criminal proceeding the statute cannot be applied in this fashion. Even if ingenuity were able to find concealed in the text a basis for this

⁴ But cf. *United States v. Healy*, 376 U. S. 75, 83, n. 7 (1964).

criminal prosecution, factors which we must take into account, drawn from the history of the statute, would preclude such a reading.

Preliminarily, it is essential to recall the nature and function of the passport. A passport is a document identifying a citizen, in effect requesting foreign powers to allow the bearer to enter and to pass freely and safely, recognizing the right of the bearer to the protection and good offices of American diplomatic and consular officers. See *Urtetiqui v. D'Arcy*, 9 Pet. 692, 699 (1835); *Kent v. Dulles*, 357 U. S. 116, 120-121 (1958); 3 Hackworth, Digest of International Law 435 (1942). 8 U. S. C. § 1101 (a)(30).

As this Court has observed, "The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law. . . ." *Kent v. Dulles*, *supra*, 357 U. S., at 125. See *Aptheker v. Secretary of State*, 378 U. S. 500, 517 (1964); *Zemel v. Rusk*, 381 U. S. 1 (1965).

Under § 215 (b) and its predecessor statutes, Congress authorized the requirement that a citizen possess a passport for departure from and entry into the United States,⁵ and there is no doubt that with the adoption and promulgation of the "Excluding Cuba" regulation, a passport was required for departure from this country for Cuba and for entry into this country from Cuba. Departure for Cuba or entry from Cuba without a passport would be a violation of § 215 (b), exposing the traveler to the criminal penalties provided in that section. But it does not follow that travel to Cuba with a passport which is not specifically validated for that country is a criminal offense. Violation of the "area restriction"—"invalidating" passports for travel in or to

⁵ It is the exception rather than the rule in our history to require that citizens engaged in foreign travel should have a passport. *Kent v. Dulles*, 357 U. S. 116, 121-123 (1958); Jaffe, *The Right To Travel: The Passport Problem*, 35 Foreign Affairs 17 (1956).

Cuba and requiring specific validation of passports if they are to be valid for travel to or in Cuba—is quite a different matter from violation of the requirement of § 215 (b) and the regulations thereunder that a citizen bear a “valid passport” for departure from or entry into the United States.

The area restriction applicable to Cuba was promulgated by a “Public Notice” and a press release, *supra*, pp. 478–479, neither of which referred to § 215 (b) or to criminal sanctions. On the contrary, the only reference to the statutory base of the announcement appears in the “Public Notice,” and this is a reference to the nonpenal 1926 Act and the Executive Order adopted thereunder in 1938.⁶ These merely authorize the Secretary of State to impose area restrictions incidental to his general powers with respect to passports. *Zemel v. Rusk, supra*. They do not purport to make travel to the designated area unlawful.

The press release issued by the Department of State at the time expressly explained the action as being “in view of the U. S. Government’s inability . . . to extend normal protective services to Americans visiting Cuba.” It explained that the action was taken in conformity with the Department’s “normal practice” of limiting travel to countries with which we do not have diplomatic relations.⁷ That “normal practice,” as will be discussed, has not included criminal sanctions. In short, the relevant State Department promulgations are not

⁶ The “Public Notice” recites that “pursuant to the authority vested in me by Sections 124 and 126 of Executive Order No. 7856, issued on March 31, 1938 (3 FR 681, 687, 22 CFR 51.75 and 51.77) under authority of . . . the Act of . . . July 3, 1926 . . . all United States passports are hereby declared to be invalid for travel to or in Cuba . . .” Department of State, Public Notice No. 179, Jan. 16, 1961, 26 Fed. Reg. 492.

⁷ State Department Press Release No. 24, Jan. 16, 1961, 44 Dept. State Bull. 178. The full text is in the Appendix to this opinion.

only devoid of a suggestion that travel to Cuba without a specially validated passport is prohibited, or that such travel would be criminal conduct, but they also contain positive suggestions that the purpose and effect of the restriction were merely to make clear that the passport was not to be regarded by the traveler in Cuba as a voucher on the protective services normally afforded by the State Department.

This was in keeping with the unbroken tenor of State Department pronouncements on area restrictions. Prior to enactment of § 215 (b) on June 27, 1952, area travel restrictions were proclaimed on five occasions while the 1918 and 1941 Acts were in effect (1918–1921 and 1941–1953).⁸ These were the predecessors of § 215 (b), and they similarly specified criminal sanctions.⁹ But in each of the five instances, the area restrictions were devoid of any suggestion that they were related to the 1918 or 1941 Acts or were intended to invoke criminal penalties if they were disregarded. They were cast exclusively in civil terms, relating to the State Department's "safe passage" functions.¹⁰ In two of these instances, the Department of State specifically emphasized the civil,

⁸ The 1918 Act was in effect by Presidential proclamation only between August 8, 1918, and March 3, 1921. (40 Stat. 1829 and 41 Stat. 1359.) The 1941 Act was in effect by successive Presidential proclamations and congressional extensions from November 14, 1941 (55 Stat. 1696), to April 1, 1953 (66 Stat. 57, 96, 137, 333), by which date § 215 (b) was already in effect by Presidential Proclamation No. 3004, Jan. 17, 1953, 67 Stat. c31, 3 CFR 180 (1949–1953 Comp.).

⁹ See p. 477, *supra*.

¹⁰ 1. Restriction in 1919 as to Germany (3 Hackworth, Digest of International Law 530 (1942)). 2. Restriction in 1950 as to Bulgaria and Hungary (22 Dept. State Bull. 399). 3. Restriction in 1951 as to Czechoslovakia (24 Dept. State Bull. 932). 4. Restriction in 1951 as to Hungary (26 Dept. State Bull. 7). 5. Restriction in 1952 as to East European countries, China, and the Soviet Union (26 Dept. State Bull. 736).

nonprohibitory nature of the restrictions.¹¹ For example, in 1952 the State Department issued area restrictions with respect to Eastern European countries, China, and the Soviet Union. The Department's press release emphasized that the "invalidation" of passports for travel to those areas "in no way forbids American travel to those areas."¹²

Since enactment of § 215 (b), the State Department has announced area travel restrictions upon three occasions in addition to Cuba.¹³ Again, although § 215 (b) was fully operative, none of these declarations purported to be issued under that section or referred to criminal sanctions. Each of them, like the Cuba regulation, sounded in terms of withdrawal of the safe-passage services of the State Department.¹⁴

In 1957, the Senate Foreign Relations Committee asked the Department: "What does it mean when a passport is stamped 'not valid to go to country X'?" After three months, the Department sent its official reply. It stated that this stamping of a passport "means that if the bearer enters country X he *cannot be assured of the protection* of the United States. . . . [but it] *does not necessarily mean that if the bearer travels to country X he will be*

¹¹ These were the 1919 Germany restriction and the 1952 East Europe, Soviet Union, and China restriction. See n. 10, *supra*. The texts of the Department's announcements of these restrictions are in the Appendix to this opinion.

¹² See the Appendix to this opinion.

¹³ 1. Restriction in 1955 as to Albania, Bulgaria, China, North Korea, and North Viet Nam (33 Dept. State Bull. 777). 2. Restriction in 1956 as to Hungary (34 Dept. State Bull. 248). 3. Restriction in 1956 as to Egypt, Israel, Jordan, and Syria (35 Dept. State Bull. 756, 21 Fed. Reg. 8577).

¹⁴ In the 1956 area restriction relating to Egypt, Israel, Jordan, and Syria, *supra*, n. 13, as well as the Cuba restriction, the Department expressly recited the 1926 Act as its basis. It did not mention § 215 (b). 21 Fed. Reg. 8577.

violating the criminal law."¹⁵ (Italics added.) Similarly, in hearings before another Senate Committee, a Department official explained that when a passport is marked "invalid" for travel to stated countries, this means that "this Government is not sponsoring the entry of the individual into those countries and does not give him permission to go in there under the protection of this Government."¹⁶

Although Department records show that approximately 600 persons have violated area travel restrictions since the enactment of § 215 (b),¹⁷ the present prosecutions are the only attempts to convict persons for alleged area transgressions.¹⁸

Until these indictments, in fact, the State Department had consistently taken the position that there was no statute which imposed or authorized such prohibition. In the 1957 hearings, referred to above, the Acting Director of the Bureau of Security and Consular Affairs, Department of State, testified that he knew of no statute providing a penalty for going to a country covered by an area restriction without a passport (as distinguished from

¹⁵ Hearings before the Senate Committee on Foreign Relations, on Department of State Passport Policies, 85th Cong., 1st Sess. (1957), p. 59.

¹⁶ Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, on the Right To Travel, 85th Cong., 1st Sess., part 2 (1957), p. 86; see also *id.*, at 62.

¹⁷ The Government conceded this to the court below. See also the Department's testimony to the same effect in Hearings before the Subcommittee To Investigate the Administration of the Internal Security Act and Other Internal Security Laws, Senate Committee on the Judiciary, on S. 3243, 89th Cong., 2d Sess. (1966), p. 43. The Chief of the Security Branch of the Legal Division of the State Department testified to the court below that he was unaware of any prosecution for violation of area restrictions under the predecessors of § 215 (b).

¹⁸ See also *Travis v. United States*, No. 67, *post*, p. 491; *Worthy v. United States*, 328 F. 2d 386 (C. A. 5th Cir., 1964).

departing or entering the United States).¹⁹ The Government, as well as others, has repeatedly called to the attention of the Congress the need for consideration of legislation specifically making it a criminal offense for any citizen to travel to a country as to which an area restriction is in effect,²⁰ but no such legislation was enacted.²¹

In view of this overwhelming evidence that § 215 (b) does not authorize area restrictions, we agree with the District Court that the indictment herein does not allege a crime. If there is a gap in the law, the right and the duty, if any, to fill it do not devolve upon the courts.

¹⁹ Hearings, n. 16, *supra*. at 91-95.

²⁰ See, *e. g.*, President Eisenhower's request for legislation, H. R. Doc. No. 417, 85th Cong., 2d Sess. (1958). The Administration's bill was S. 4110, H. R. 13318. In 1957, the Commission on Government Security, specifically established by Congress to study travel and passport legislation, among other things (Public Law 304, 84th Cong., 1st Sess., 69 Stat. 595 (1955)), recommended that "Title 8, U. S. C. A., section 1185 (b), should be amended to make it unlawful for any citizen of the United States to travel to any country in which his passport is declared to be invalid." Report (S. Doc. 64, 84th Cong.), at 475. The next year, the Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York published a report entitled "Freedom To Travel." One of the authors of this Report was the Honorable Adrian S. Fisher, former Legal Advisor to the Department of State. This Report concluded, at 70, as to criminal enforcement of area restrictions:

"The Committee has not discovered any statute which clearly provides a penalty for violation of area restrictions, and this seems to be a glaring omission if the United States is seriously interested in the establishment and enforcement of travel controls. Knowing violation of valid restrictions should certainly be subject to an effective sanction, which is not now the case."

²¹ The most recent bill, introduced by the Department after two years of study, was H. R. 14895, 89th Cong., 2d Sess. (1966). See Hearings before the Subcommittee To Investigate the Administration of the Internal Security Act and Other Internal Security Laws, Senate Committee on the Judiciary, on S. 3243, 89th Cong., 2d Sess. (1966), p. 73. Some of the other bills which failed in Congress are discussed in the opinion of the court below.

The area travel restriction, requiring special validation of passports for travel to Cuba, was a valid civil regulation under the 1926 Act. *Zemel v. Rusk, supra*. But it was not and was not intended or represented to be an exercise of authority under § 215 (b), which provides the basis of the criminal charge in this case.

Crimes are not to be created by inference. They may not be constructed *nunc pro tunc*. Ordinarily, citizens may not be punished for actions undertaken in good faith reliance upon authoritative assurance that punishment will not attach. As this Court said in *Raley v. Ohio*, 360 U. S. 423, 438, we may not convict "a citizen for exercising a privilege which the State clearly had told him was available to him." As *Raley* emphasized, criminal sanctions are not supportable if they are to be imposed under "vague and undefined" commands (citing *Lanzetta v. New Jersey*, 306 U. S. 451 (1939)); or if they are "inexplicably contradictory" (citing *United States v. Cardiff*, 344 U. S. 174 (1952)); and certainly not if the Government's conduct constitutes "active misleading" (citing *Johnson v. United States*, 318 U. S. 189, 197 (1943)).

In view of our decision that appellees were charged with conspiracy to violate a nonexistent criminal prohibition, we need not consider other issues which the case presents.

Accordingly, the judgment of the District Court is

Affirmed.

APPENDIX TO OPINION OF THE COURT.

The following three Department of State statements in connection with area restrictions are referred to in the foregoing opinion:

(1) State Department Press Release No. 24, Jan. 16, 1961, 44 Dept. State Bull. 178:

"The Department of State announced on January 16 that in view of the U. S. Government's

inability, following the break in diplomatic relations between the United States and Cuba, to extend normal protective services to Americans visiting Cuba, U. S. citizens desiring to go to Cuba must until further notice obtain passports specifically endorsed by the Department of State for such travel. All outstanding passports, except those of U. S. citizens remaining in Cuba, are being declared invalid for travel to Cuba unless specifically endorsed for such travel.

"The Department contemplates that exceptions to these regulations will be granted to persons whose travel may be regarded as being in the best interests of the United States, such as newsmen or businessmen with previously established business interests.

"Permanent resident aliens cannot travel to Cuba unless special permission is obtained for this purpose through the U. S. Immigration and Naturalization Service.

"Federal regulations are being amended to put these requirements into effect.

"These actions have been taken in conformity with the Department's normal practice of limiting travel to those countries with which the United States does not maintain diplomatic relations."

(2) State Department Press Release No. 341, May 1, 1952, 26 Dept. State Bull. 736:

"The Department of State announced on May 1 that it was taking additional steps to warn American citizens of the risks of travel in Iron Curtain countries by stamping all passports not valid for travel in those countries unless specifically endorsed by the Department of State for such travel.

"In making this announcement, the Department emphasized that this procedure in no way forbids

American travel to those areas. It contemplates that American citizens will consult the Department or the consulates abroad to ascertain the dangers of traveling in countries where acceptable standards of protection do not prevail and that, if no objection is perceived, the travel may be authorized.

"All new passports will be stamped as follows: THIS PASSPORT IS NOT VALID FOR TRAVEL TO ALBANIA, BULGARIA, CHINA, CZECHOSLOVAKIA, HUNGARY, POLAND, RUMANIA OR THE UNION OF SOVIET SOCIALIST REPUBLICS UNLESS SPECIFICALLY ENDORSED UNDER AUTHORITY OF THE DEPARTMENT OF STATE AS BEING VALID FOR SUCH TRAVEL.

"All outstanding passports, which are equally subject to the restriction, will be so endorsed as occasion permits."

"Freedom to Travel," a 1958 Report of the Special Committee To Study Passport Procedures of the Association of the Bar of the City of New York, characterized this as "an honest admission of the lack of statutory power to enforce an area restriction of this nature." At 70. The Department gave a practical construction of this area restriction in 1954 when it informed two newsmen desiring to travel to Bulgaria that they could go there without a passport and "use, as a travel document . . . an affidavit in lieu of a passport," and that, if Bulgaria would permit them entry, "the Department . . . [would hold] no objection." Hearings on Department of State Passport Policies before the Senate Committee on Foreign Relations, 85th Cong., 1st Sess. (1957), p. 65.

(3) 3 Hackworth, Digest of International Law 530 (1942) (1919 Germany restriction):

"The Department is not now issuing or authorizing issuance or amendment of passports for Ger-

many. However, the Department interposes no objection to the entry into Germany of Americans who have important and urgent business to transact there. In view of the present situation, such persons should understand that they go upon their own responsibility and at their own risk. They cannot be guaranteed the same protection which they might expect under normal conditions."



Staughton LYND, Appellant,
v.
Dean RUSK, Secretary of State, Appellee.
Jane WITTMAN, Appellant,
v.

SECRETARY OF STATE, Appellee.
 Nos. 20448, 20790.

United States Court of Appeals
 District of Columbia Circuit.
 Decided Dec. 20, 1967.

Suits for injunction against revocation by Secretary of State of passports and for declaratory relief. The United States District Court for the District of Columbia, Edward M. Curran and Alexander Holtzoff, JJ., granted summary judgment to defendant in both cases, and appeals were taken. The Court of Appeals, Leventhal, Circuit Judge, held, *inter alia*, that inability of citizen to make any definite specific plans until the underlying general controversy was resolved provided a basis for an appropriate general declaration that the Secretary could not withhold citizen's passport because of citizen's failure to give assurances that he would refrain from travel to designated areas without a passport.

Judgments affirmed in part, reversed in part.

1. Citizens ⇨10.2
Constitutional Law ⇨274

Right to travel is protected by the Fifth Amendment, and statutory limitations upon that right will be strictly construed. U.S.C.A.Const. Amend. 5.

2. Citizens ⇨10.2

Secretary of State may not revoke or withhold a passport because of citizen's refusal to promise that he will not travel to restricted area without using a passport.

3. Citizens ⇨10.2

Congressional silence does not permit inference that Congress, which has been unready to support Secretary of State by making travel to restricted areas a crime, has authorized Secretary to impose administrative sanctions of passport withdrawal, which deprives citizen of liberty to travel to nonrestricted areas as well as restricted ones.

4. Citizens ⇨10.2

Secretary of State may deny a passport, or revoke one already extant, when sole travel that is intended by citizen is to an area that Secretary has declared restricted, but the silence of Congress did not permit an inference that it had authorized executive curtailment of constitutionally protected liberty of travel to nonrestricted areas to achieve the objective of restraining travel to restricted areas. 22 U.S.C.A. § 211a; Executive Order No. 11295, 22 U.S.C.A. § 211a

note; Immigration and Nationality Act § 215(b) 8 U.S.C.A. § 1185(b).

5. Citizens ⇨10.2

Secretary of State has authority to control the lawful travel of the passport, even though Congress has not given authority to control the travel of the person, since passport is an official document which is the property of the Government. 22 U.S.C.A. § 211a; Executive Order No. 11295, 22 U.S.C.A. § 211a note; Immigration and Nationality Act, § 215(b), 8 U.S.C.A. § 1185(b).

6. Citizens ⇨10.2

Citizen had no right to use a passport issued to her in violation of the conditions and restrictions which by law governed its use, so that Secretary of State properly revoked and withheld her passport until she agreed to refrain from the passport's use in restricted areas. 22 U.S.C.A. § 211a; Executive Order No. 11295, 22 U.S.C.A. § 211a note; Immigration and Nationality Act, § 215(b), 8 U.S.C.A. § 1185(b).

7. Citizens ⇨10.2

Reasonably concrete and specific travel outside the country must be in contemplation before a complainant can obtain injunctive relief against the revocation of his passport.

8. Declaratory Judgment ⇨203

A court may issue a declaration that the Secretary of State has erred as a matter of law in the reason assigned for denial of a passport without necessarily determining whether or how a passport should be issued.

9. Declaratory Judgment ⇨203

Inability of citizen seeking injunction against Secretary of State's revocation of his passport and for declaratory relief to make any definite specific plans until the underlying general controversy was resolved provided a basis for an ap-

propriate general declaration that the Secretary could not withhold citizen's passport because of citizen's failure to give assurances that he would refrain from travel to designated areas without a passport.

Mr. David Carliner, Washington, D. C., with whom Messrs. Edward J. Ennis, Stephen W. Porter and Jack Wasserman, Washington, D. C., were on the brief, for appellant in No. 20,448.

Mr. Leonard B. Boudin, Washington, D. C., with whom Mr. David Rein, Washington D. C., was on the brief, for appellant in No. 20,790.

Mr. Robert L. Keuch, Attorney, Department of Justice, with whom Asst. Atty. Gen., Yeagley, Messrs. David G. Bress, U. S. Atty., and Kevin T. Maroney, Attorney, Department of Justice, were on the brief, for appellee.

Before BAZELON, Chief Judge, LEVENTHAL and ROBINSON, Circuit Judges.

LEVENTHAL, Circuit Judge:

The present cases raise the question whether and to what extent the Secretary of State may enforce compliance with area restrictions on foreign travel, following his determination that travel by United States citizens to five designated countries—China, Cuba, North Korea, North Vietnam, and Syria—would be inimical to the nation's foreign relations.¹

In *Zemel v. Rusk*, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965), the Supreme Court held that the Passport Act of 1926, 22 U.S.C. § 211a (1964),² authorizes the Secretary to make such a determination and to restrict the validity of United States passports for travel in these countries. *United States v. Laub*, 385 U.S. 475, 87 S.Ct. 574, 17 L.Ed.2d

1. See Public Notices 256, 257, 258, 259, 32 Fed.Reg. 4140 (1967); Public Notice 270, 32 Fed.Reg. 9175 (1967).

2. "The Secretary of State may grant and issue passports * * * under such rules as the President shall designate

and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports." The President has delegated his rule-making authority under this statute to the Secretary, Exec. Order No. 11295, 3 C.F.R. 1966 Comp. at 138.

526 (1967), however, held that travel to these forbidden places without a specially validated passport has not been made a criminal offense by Congress.

The question that remains is whether the Secretary may withhold or revoke a passport if the person declines to give assurances that he will not travel to the designated areas.

Congress has not given the Secretary any power to proscribe travel. His power is limited to controlling the issuance of passports and granting of diplomatic facilities. However we must recognize, as the Supreme Court did in *Zemel*, that denial of a passport has the undoubted practical consequence of effectively limiting travel. This may also be a legal consequence, since Section 215(b) of the Immigration and Nationality Act, 8 U. S.C. § 1185(b) (1964), which is operative because of the Presidentially declared national emergency,³ makes it a crime to leave the country without a passport—except for travel to certain areas not within the ambit of appellants' cases.⁴ Taking account of these consequences and the constitutional dimension of the right to travel, the Secretary's power over passports must be construed in such a way as to minimize interference with legitimate travel.

Appellant Lynd's difficulties with the Passport Office arise out of his January 1966 self-styled "fact-finding and investigating" mission to North Vietnam to "clarify the negotiating position of the other side." He obtained a North Vietnamese visa in Czechoslovakia. Appellant Wittman, in an earlier and more modest venture, visited Cuba in 1964 with a group of American students. One of her goals was "to study the educational system." On their respective returns to

the United States each appellant was informed that his passport had been "tentatively withdrawn." They individually pursued administrative remedies within the Passport Office, and hearings were held.

At Lynd's hearing two questions of chief importance were posed. He was asked:

If you are issued a passport, will you use the passport issued to you to travel in violation of the conditions or restrictions contained therein, or any subsequent restrictions imposed upon the use of the passport by the United States Government acting through the Secretary of State or other responsible official?

Lynd replied: "My answer to that question is no." He was then asked this question, which was put forward as embodying a "subtle difference."

If you are issued a passport will you travel in violation of the restrictions or conditions contained in the passport, or any subsequent restrictions or conditions imposed upon the travel of a United States citizen by the United States Government acting through the Secretary of State or other responsible official with or without using the passport?

Lynd's answer was that he agreed not to use the passport in areas restricted by the Secretary, but reserved the right to travel to those areas without using a passport.⁵

The record makes clear that the Secretary's action was based on Lynd's refusal to give a categorical "no" reply to this second question, phrased as a failure to provide assurances that he would not again violate area restrictions

3. Proclamation No. 3004, 3 C.F.R. at 180 (1949-53 Comp.).

4. The Secretary has broadened somewhat the travel vistas of those without passports by issuing regulations, 22 C.F.R. § 53.2(b) (1967), exempting journeys in the Americas (excluding Cuba) from the operation of this criminal law. We understand, however, that foreign countries

have visa requirements that greatly limit even this travel.

5. Lynd amplified that he considered himself "an open and honest person, not an indiscriminate lawbreaker," and that he was asserting his constitutional right to travel as embracing a freedom of speech, a need in the interest of peace for constructive "contact between persons separated by war."

in his passport. Miss Wittman was asked similar questions. It suffices here to say that she refused to give any assurances as to her travel "with or without a passport." The hearing officer recommended final withdrawal of their passports pursuant to a regulation, since revoked, which authorized refusal of passport facilities on a finding that the traveler's "activities abroad would * * * (b) be prejudicial to the orderly conduct of foreign relations; or (c) otherwise be prejudicial to the interests of the United States," 27 Fed.Reg. 344 (1962), formerly codified as 22 C.F.R. 51.136 (1965). This recommendation and accompanying findings were adopted by the Director of the Passport Office, and subsequently this decision was upheld by the Secretary⁶ following an appeal to the Board of Passport Appeals. Suits were brought for injunctions against the Secretary's revocation of the passports and for declaratory relief. Summary judgment was granted to defendant in both cases.

I

We begin our consideration of the issues by taking note of the complication that the regulation pursuant to which the Secretary acted has been withdrawn, and more narrowly drafted provisions substituted in its stead. These new regulations specifically provide that someone who has traveled "to, in, or through a restricted country or area without a passport specifically validated for such travel" may be subject to a passport revocation proceeding and may be refused a new passport "until such time as the Secretary receives formal assurance and is satisfied that the person will not again travel in violation of the travel restrictions." 31 Fed.Reg. 13544, October 20, 1966, codified as 22 C.F.R. §

51.74 (1967). Appellant Lynd, while recognizing that the new regulations are narrower, has mounted an extensive attack on the old regulation, arguing that it was both unconstitutionally vague and unauthorized by statute. We see little point in providing an academic ruling on the vagueness of the rescinded regulation. In view of the refusal to give "assurance" there is no basis for suggesting that the result would be different if the case were reconsidered under the new regulation.⁷ No substantial rights are being disregarded for, as appellant Lynd concedes (Brief, p. 19 n. 3), "no purpose would be served in remanding this case for further proceedings under the new regulation in view of the fact that the premise of the appellee's decision would remain unchanged." In the circumstances, we think it appropriate to consider the question whether the Passport Act of 1926 authorizes the Secretary to withhold or revoke passports for failure to provide appropriate assurances concerning travel to designated areas.

II

The principles that in our view govern these cases may be summarized as follows: We think Congress has authorized the Secretary to require an applicant for a United States passport to refrain from using it in a restricted area and indeed from transporting it into a restricted area. Although the Secretary has the authority to decline to issue a passport when the traveler's sole purpose is to journey to restricted areas, he cannot extend that authority so as to withhold a passport when the applicant seeks to travel to a non-restricted area for any of the myriad purposes—business, tourism, scholarship—which make travel part of the "liberty" the Constitution protects. The passport must be issued to such a

6. The Secretary withdrew Lynd's passport, and requested its surrender, on the ground of Lynd's admitted travel to North Vietnam notwithstanding the area restrictions in his passport, his refusal to provide assurances that he would not again violate the area restrictions in his passport, and the Secretary's "conclusion that future travel by you to North Viet-

Nam in violation of the area restrictions in your passport would be prejudicial to the orderly conduct of foreign relations or otherwise be prejudicial to the interests of the United States."

7. The new regulations make explicit that any ground justifying a refusal to issue a new passport also justifies revoking one already issued. 2 C.F.R. § 51.71 (1967).

traveler even though while outside the United States he plans both to travel to a non-restricted area and also to visit a restricted zone. However, the Secretary may take reasonable steps to assure that any travel into or within a restricted area is done without a passport.

We shall first present the analysis underlying these principles, and subsequently (in Part III) apply them to the cases before us.

1. The Secretary maintains that both these cases must be affirmed on the authority of *Worthy v. Herter*, 106 U.S. App.D.C. 153, 270 F.2d 905, cert. denied 361 U.S. 918, 80 S.Ct. 255, 4 L.Ed.2d 186 (1959). It is difficult to tell whether in *Worthy* the court had before it the contention urgently pressed by Lynd, that the Secretary has power to set area restrictions only for travel using a passport and is powerless to hinder travel without a passport. In any event, we cannot accept the *Worthy* ruling as dispositive. In *Worthy* the court supported its holding on two principal grounds. The first was the inherent foreign affairs power of the executive. But in the cases before us the Secretary does not press any claim that he has an "inherent" authority, and contends his action is valid under the Passport Act of 1926. It is not insignificant that the *Zemel* opinion, supporting the Secretary, did not rely on an inherent authority. We think any claim of inherent authority would fall afoul of the Supreme Court's warning in *Kent v. Dulles*, 357 U.S. 116, at 129, 78 S.Ct. 1113, at 1120, 2 L.Ed.2d 1204 (1958), that as freedom to travel is part of the "liberty" protected by the Fifth Amendment, "if that 'liberty' is to be regulated, it must be pursuant to the law-making functions of the Congress." In deciding in the alternative that there was statutory basis for the Secretary's action *Worthy* relied significantly though not exclusively on Section 215(b) of the Immigration and Nationality Act. The

unanimous opinion in *United States v. Laub*, 385 U.S. 475, 87 S.Ct. 574, 17 L. Ed.2d 526 (1967), completely undercuts the significance of Section 215(b).

2. Consequently, we face the issues anew. *Kent v. Dulles*, *supra*, and *Zemel v. Rusk*, *supra*, make plain that the language of the Passport Act of 1926 is broader than the authority it confers. That Act must "take its content from history: it authorizes only those passport refusals and restrictions 'which it could fairly be argued were adopted by Congress in light of prior administrative practice.'" *Zemel v. Rusk*, 381 U.S. 1, at 17-18, 85 S.Ct. 1271 at 1281.

In upholding the Secretary's authority both to impose area restrictions and to refuse to validate passports for travel in the restricted area, the *Zemel* opinion stressed that in the absence of contrary indication in the legislative history, the broad language of the 1926 Act and its forerunners served to constitute approval of a practice going back to the War of 1812. The Court stressed the Secretary's long and consistent administrative interpretation of the statute as empowering him to impose these restraints. 381 U.S. at 10-11, 85 S.Ct. 1271. The Court relied on Exec.Order No. 7856, 3 Fed.Reg. 681, 687 (1938),⁸ the basic delegation of executive rule-making authority under the 1926 Act to the Secretary of State, which provided:

The Secretary of State is authorized in his discretion to refuse to issue a passport, to restrict a passport for use only in certain countries, to restrict it against use in certain countries, to withdraw or cancel a passport already issued, and to withdraw a passport for the purpose of restricting its validity or use in certain countries.

This assertion of authority, insofar as area restrictions are concerned, is reflective of what has in fact been the reasonably consistent State Department prac-

8. This Executive Order was revoked in 1966, Exec. Order 11295, 3 C.F.R. 1966 comp. at 138. Plainly the revocation was not intended to withdraw the assertion of

authority, nor does it undermine the inference of previous legislative assent to the assertion.

tice both before and after the issuance of this Executive Order. Passports were regularly denied to applicants when their stated travel destination was an area that the Secretary had restricted. Passports were denied for trips to Belgium in 1915, for all nonemergency European travel during World War I, for Ethiopia in 1935, and for Spain in 1937.⁹ These refusals were more than mere warnings of the inability to provide normal diplomatic facilities. They were designed to keep Americans out of the troubled areas.¹⁰ In light of this history, significant under *Zemel* and *Kent* for construction of the Secretary's discretion under the 1926 Passport Act, we must reject appellants' contention that the Secretary has no power whatever to refuse a passport because of the applicant's intended destination.

3. The power of the Secretary to act with reference to a traveler's destination serves not only as a ground for refusal to issue a passport, but also, we think, as a basis for revoking a passport.¹¹ A passport is not like a license, where the holder's legitimate reliance on its continuation may mandate vesting him with special protections against revocation. Citizens do not stand on different footings in asserting the right to travel merely by virtue of having received a passport in connection with prior trips abroad.

4. We are aware that at the time the administrative practice was jelling, the refusal to issue a passport did not have the legal consequence of prohibiting travel into restricted areas. It was not illegal to leave the country without a passport until 1941, except for a short period

during World War I.¹² But the primary objective of the Secretary in refusing passports to restricted areas was to stop the travel to those areas. The Secretary's power—historically asserted and exercised—was not revoked merely because it is now reinforced by Section 215 of the Immigration and Nationality Act, in time of war or national emergency.¹³

5. The difficulty arises, however, because the power asserted by the Secretary in his regulations is not limited to a denial of a passport to go to a restricted area. If the Secretary denies a passport altogether—because he is not "satisfied" that the traveler will refrain from going to a restricted area—this amounts to a prohibition not only of travel to restricted areas, but also of most other travel. These travels stand on different constitutional planes.¹⁴ To keep travelers from five countries, the Secretary bars them from visiting over one hundred others. We think this consequence is not permissible under the statutes thus far enacted and the cases thus far decided.

[1-3] The 1958 ruling in *Kent v. Dulles*, *supra*, is our touchstone. It establishes not only that the right to travel is protected by the Fifth Amendment, but that statutory limitations will be strictly construed. "Where activities or enjoyment, natural and often necessary to the well-being of an American citizen, such as travel, are involved, we will construe narrowly all delegated powers that curtail or dilute them," 357 U.S. at 129, 78 S. Ct. at 1120. Mindful of the consequences to the citizen, the Court was unwilling to find that the broad language of the

9. See III G. Hackworth, *Digest of International Law*, 526-533 (1942).

10. See Riesman, *Legislative Restrictions on Foreign Enlistment and Travel*, 40 *Colum.L.Rev.* 793, 807 (1940).

11. This consequence is now expressly set forth in 22 C.F.R. § 51.71 (1967).

12. The pre-1926 forerunner of the present Section 215 of the Immigration and Nationality Act was operative only from 1918 to 1921—Act of May 22, 1918. 40

Stat. 559, Act of March 3, 1921, 41 Stat. 1359.

13. As already noted, however, travel in the Americas is permitted without passports. Apparently a trip outside the Americas can be made legally without a passport as long as the traveler sojourns for sixty days before leaving for a part of the world outside the Western Hemisphere. See 22 C.F.R. § 53.2 (1967).

14. See *Zemel v. Rusk*, *supra*.

1926 Act authorized the Secretary to take actions not legitimized by an administrative practice which Congress could fairly be said to have deliberately accepted.¹⁵ The past administrative practice of the State Department (see point 2) justifies the refusal to issue a passport sought for the sole purpose of travel to a restricted area. But we see no substantial evidence that Congress approved the achievement of that objective by prohibiting travel to non-prohibited areas. When Congress approved denial of a passport in 1926 the passport was not, as today, an exit permit required by law for nearly all foreign travel. If the sole travel planned by the applicant is to an area reasonably restricted by the Secretary as off limits to passport holders, and hence carries no plenary constitutional protection, Congressional approval of the denial of a passport to undertake that travel is fairly inferred. But we see no comparable basis for inferring that Congress has given the Secretary the authority to deny legitimate, constitutionally protected travel, merely because that is a technique which provides greater assurance of hindering travel to designated areas.

Gleaning intention from Congressional silence is under the best of circumstances an elusive task. Our difficulties are magnified here, however, because we do not deal with a single Congressional enactment that is and has been periodically reenacted or revised.¹⁶ The area of travel control is criss-crossed by three statutes, the Passport Act of 1926, 22 U.S.C. § 211a (1964), Section 215(b) of the Immigration and Nationality Act, 8 U.S.C. § 1185(b) (1964), and 18 U.S.C. § 1544 (1964),¹⁷ which were drafted at different times, for different purposes, and without an overall design. They have been the source of considerable confusion, inside the State Department as well as in Congress and among the public,¹⁸ as to the ways in which the travel rights of Americans can be limited by the Secretary's exercise of discretion. Although Congress has approved administrative action intended to limit travel to restricted areas through the means of restricting passports, as appears from *Zemel*, it has not made travel to restricted areas a crime and added possible deprivation of liberty as a sanction for achieving this objective. *United States v. Laub, supra*. Indeed, it has several times

15. Cf. *Greene v. McElroy*, 360 U.S. 474 at 506, 507, 79 S.Ct. 1400, at 1419, 3 L.Ed. 2d 1377 (1959), that since "decisions of great constitutional import and effect" must not be "relegated by default to administrators who, under our system of government, are not endowed with authority to decide them," delegation may not be inferred from mere acquiescence or implied ratification but must be made explicit, and "it must be made clear that the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use."

16. Compare *Cammarano v. United States*, 358 U.S. 498, 508-509, 79 S.Ct. 524, 3 L.Ed.2d 462 (1959); *Massachusetts Mut. Life Insurance Co. v. United States*, 288 U.S. 269, 273, 53 S.Ct. 337, 77 L.Ed. 739 (1933).

17. In relevant part: "Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions

or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports * * * shall be fined not more than \$2,000 or imprisoned not more than five years, or both."

18. See, e. g., Hearing before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, *The Right to Travel*, 85th Cong. 1st Sess., part 2 (1957) at 86-101. Law review writing on travel control is extensive, although primarily to the constitutional problems. See, e. g., Ehrlich, *Passports*, 19 *Stan.L.Rev.* 129 (1966); Goodman, *Passports in Perspective*, 45 *Texas L.Rev.* 221 (1966); Pollitt & Raugh, *Restrictions on the Right to Travel*, 13 *W.Res.L.Rev.* 128 (1961); Velvel, *Geographical Restrictions on Travel: The Real World and the First Amendment*, 15 *Kansas L.Rev.* 35 (1966); Note, *Constitutional Law: Resolving Conflict Between the Right to Travel and Implementation of Foreign Policy*, 1966 *Duke L.J.* 233.

refused to enact legislation directed to precisely that end.¹⁹ We see no basis for inferring that Congress, while unready to support the Secretary's area restrictions by adding the sanction of deprivation of personal liberty, has silently permitted the Secretary to impose administrative sanctions depriving a citizen of a part of his constitutional liberty (of travel to non-prohibited areas), a sanction often equal to and sometimes more stringent than criminal sanctions, without the protections inherent in the criminal process as a guarantee against executive excess.²⁰

[4] 6. To recapitulate, we think the Secretary may deny a passport, or revoke one already extant, when the sole travel that is intended by the citizen is to an area that the Secretary has declared restricted. But the soft support of silence from Congress does not permit an inference that it has authorized executive curtailment of the constitutionally protected "liberty" of travel to non-restricted areas to achieve the objective of restraining travel to restricted areas.

Guidance in ascertaining legislative intention as to the Secretary's power under the 1926 Act is furnished by reference to the historical distinction between control over passports and control over travel. Today, the "crucial function" of a passport is as an exit permit, lifting what is otherwise the bar of Section 215 of the Immigration and Nationality Act. But historically, as was stressed by the Court in *Laub*, the prime role of the passport—and a role over which the Secretary has undeniable authority—was to identify the bearer as a United States national entitled to "receive the protection and good offices of American diplomatic and consular officers abroad" and to officially request on the "part of the

Government of the United States that the officials of foreign governments permit the bearer to travel or sojourn in their territories and in case of need to give him all lawful aid and protection." III G. Hackworth, *Digest of International Law* at 435 (1942).

[5] In our view the Secretary's power includes but goes beyond a mere denial of diplomatic facilities to a citizen traveling in a restricted area. He has the authority under 18 U.S.C. § 1544 (1964) to determine how a passport may be "used." We think the Secretary may condition the issuance of a passport on the applicant's agreement to refrain from taking the passport into a restricted area, and, further, to lodge the passport in safe-keeping before such a trip is made. That a passport is an official document, issued under the Government's seal and embodying a formal Government request, makes acceptable considerable Governmental control over where and in what ways that document is used, provided that any such controls are generally applicable. A traveler's possession of an American passport, even in areas for which the passport is stamped "not valid," may well be deemed helpful both by the traveler and by the country involved, both as an official identification and as a lever in the event of some mishap during the journey.²¹ The inability to take along a passport may inhibit some, although not the most determined, travelers to restricted areas. But we think that under *Zemel* this limited deterrence of travel, resulting from the Secretary's exercise of his power under the 1926 Passport Act, is not unconstitutional. See 381 U.S. at 13-15, 85 S.Ct. 1271. In short, we think the Secretary has authority to control the lawful travel of the passport, even though Congress has

19. See, e. g., S. 4110, 85th Cong., 2d Sess. (1958), H.R. 14895, 89th Cong., 2d Sess. (1966).

20. See Chief Judge Bazelon's dissenting opinion in *Briehl v. Dulles*, 101 U.S.App. D.C. 239, 257, 248 F.2d 561, 579 (1957), the case in which the majority ruling was reversed *sub nom.* *Kent v. Dulles*, *supra*.

21. We note, for example, that both Lynd and Wittman took their United States passports with them. Although the North Vietnam visa was not stamped on the passport, it was brought out that Lynd displayed his passport to North Vietnamese officials (Hearing Tr. 70). Wittman refused to answer whether she had shown hers. (Hearing Tr. 45).

not given authority to control the travel of the person. This view is strengthened by the character of the passport, an official document that has consistently been regarded as the property of the Government.²²

III

The foregoing principles result in the following disposition of the particular cases before us:

A. *Wittman*

[6] Appellant Wittman in effect declined to give any assurances as to her travel to designated areas "with or without using the passport." We do not think appellant has the right, which she asserted, to use a passport issued to her in violation of the conditions and restrictions which by law govern its use. We affirm the Secretary's revocation and withholding of a passport unless she agrees to refrain from the passport's use in (including transportation to) restricted areas.

B. *Lynd*

Unlike Miss Wittman, Professor Lynd gave all assurances requested of him with regard to the use of the passport. That does not establish his right to the injunctive relief requested. Although the cases arise in connection with the denial of a passport, the underlying right of the complainant with which this court is basically concerned is not the right to a passport as such. The right to a passport exists only in connection with intended travel. Passports are not issued merely because someone wants the document to frame on the wall. In his amended complaint, Lynd alleged as an irreparable injury his inability to travel to London to keep teaching commitments for the September, 1966 term. That particular journey is, of course, no longer an issue.

[7] We think that reasonably concrete and specific travel outside the country must be in contemplation before a complainant can obtain injunctive re-

lief. There may be an inconvenience and irritation resulting from the temporary revocation of a passport during a period when the applicant has no desire to travel, but it is not an interest requiring injunctive relief either of a conventional or mandatory nature, directed to the Secretary, and the prayer for such relief may properly be tabled for want of equity.

We are aware that the Secretary routinely issues passports for millions of Americans whose travel plans are relatively indefinite. But they are not likely to travel into restricted areas. An applicant who will not give a commitment that would be given routinely by American tourists is not entitled to insist on the routine processing they receive. The Secretary may take measures reasonably suited to insure that such an applicant keeps his pledge not to use the passport in restricted areas, perhaps by requiring the applicant to leave the passport with a responsible depository, approved by the Secretary, in a country that has not been designated, before undertaking travel to designated countries. We therefore affirm the denial of an order intended to result in the issuance of a passport forthwith.

[8, 9] Lynd also seeks a declaratory judgment "that the defendant's action in refusing passport facilities to permit the plaintiff to travel to all countries, except to [restricted countries] is contrary to law." Although his travel plans may not be sufficiently definite to require an equity court to interpose a mandatory injunction restoring his passport at this time, the dispute as to the Secretary's power is sufficiently "definite and concrete, not hypothetical or abstract" to bring it within the spirit of *Aetna Life Ins. Co. of Hartford Conn. v. Haworth*, 300 U.S. 227 at 242, 57 S.Ct. 461, at 464, 81 L.Ed. 617 (1937). A court may issue a declaration that the Secretary has erred as a matter of law in the reason assigned for denial of a passport without necessarily determining whether or

22. See III G. Hackworth, *Digest of International Law* 437-439 (1942), 22 C.F.R. § 51.9 (1967).

how a passport should be issued. *Perkins v. Elg*, 307 U.S. 325, 59 S.Ct. 884, 83 L.Ed. 1320 (1939). Lynd's inability to make any definite specific plans until the underlying general controversy is resolved is, given his general intent to travel, basis for providing an appropriate general declaration. *Cf. Abbott Laboratories v. Gardner*, 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). The cause is reversed and remanded with instructions to declare that the Secretary may not withhold Lynd's passport because of Lynd's failure to give assurance that he will refrain from travel to designated areas without a passport.

The judgment in 20790 is affirmed.

The judgment in 20448 is affirmed in part and reversed in part.



INDIVIDUALS

A

	Page
Abshire, David M. (statement)-----	7563, 7566, 7572, 7620-7621
Adams, Cecil Clarence-----	7682, 7684, 7687, 7692
Adams, Herbert-----	7682, 7687
Agnew, Spiro-----	7685, 7689
Anderson, Ed-----	7682, 7692
Aptheker (Herbert)-----	7689
Ashbrook, John M-----	7606
Axis Sally. (<i>See</i> Gillars, Mildred)	

B

Barnett, Richard J-----	7683, 7685
Binh, Madam. (<i>See</i> Nguyen Thi Binh.)	
Bennett, Charles E. (testimony)-----	7604, 7608-7610
Berrigan, Daniel-----	7580
Brooks, James F-----	7572, 7573, 7579
Brown, Ellen-----	7683
Bunker, Elsworth-----	7665

C

Camp, Katherine (Kay)-----	7683, 7686, 7687
Carmichael, Stokeley-----	7618, 7682, 7684, 7685, 7687, 7692
Castro, Fidel-----	7618
Celler, Emanuel-----	7604, 7620
Charles, Olga-----	7580
Chomsky, Noam-----	7683, 7685, 7690
Clark, Ramsey-----	7548, 7551, 7575, 7577, 7612, 7616, 7618-7620, 7635
Cleaver, Eldridge-----	7618, 7683, 7685, 7689, 7690, 7692
Clifford, Clark-----	7057
Cobb, Charles-----	7682, 7684, 7692
Coffin, William Sloane, Jr-----	7580
Collins, Wayne M-----	7589
Cook, Theirrie (Terrie)-----	7683, 7687
Craven, J-----	7686
Craven, Joseph (Jay)-----	7683

D

D'Aquino, Iva Toguri (Tokyo Rose)-----	7553, 7583, 7584, 7588, 7589, 7597, 7599, 7600, 7604
Davis, Mendel J-----	7606
Davis, Rennie (Rennard Cordon)-----	7683, 7685, 7689
Dellinger, David-----	7575
Dowd, Douglas-----	7683, 7685

E

Eisenhower (Dwight D.)-----	7638, 7655, 7656, 7660, 7662, 7675
Ellen, Ruby-----	7681
Elliot, Karen-----	7680
Epstein, Joel-----	7682, 7692
Evans, Linda-----	7683, 7685

F

Fernandez, Richard-----	7683, 7690
Field-----	7627
Fisher, Steve-----	7682, 7692

	Page
Floyd, Randy	7683
Fonda, Jane Seymour (Mrs. Roger Vadin Plemiannilicov)	7539-
7542, 7546-7552, 7555, 7556, 7558-7564, 7572, 7574-7577, 7581-7591,	
7593, 7602, 7610, 7611, 7616, 7618-7620, 7633, 7640, 7642-7645, 7647,	
7649-7655, 7658, 7659, 7661-7663, 7665-7676, 7678-7681, 7683, 7688,	
7691, 7692, 7694	
Fonda, Henry	7576
Frey, Louis, Jr.	7617, 7618-7620 (statement)
Frishman, Robert	7689
Froines, Ann	7683, 7686, 7690
Fulmer, Mark	7682, 7687

G

Gartley, Minnie Lee	7580
Gillars, Mildred (Axis Sally)	7550, 7553, 7604
Goebbels	7588, 7593

H

Harriman, Averell	7580, 7657
Hart, Delbert	7608
Hayden, Thomas (Tom)	7682, 7685, 7689
Hegdahl, Douglas	7689
Henkin, Daniel	7645
Hersh, Seymour	7691
Hitler, Adolph	7588
Ho Chi Minh	7652, 7658, 7662, 7671, 7675
Hoffa, James (R.)	7558
Hoffman, Abbie	7548, 7551, 7692 ¹
Holmes, Oliver Wendell	7550, 7630
Horner, Robert M.	7601, 7638, 7681
Hunter, Edward	7559, 7581-7597 (testimony)

I

Ichord, Richard H.	7540, 7541, 7551, 7562, 7566, 7572, 7606, 7633, 7634
Ifshin, Davin	7683, 7686

J

Jackson, Robert H.	7544, 7624, 7628
Johnson, James A.	7683, 7685, 7689, 7692
Johnson (Lyndon B.)	7656
Johnson, Robert D.	7562, 7566, 7572-7581 (testimony), 7635
Joyce, William (Lord Haw Haw)	7595, 7597

K

Kennedy (John F.)	7656
King, Carleton J.	7615-7617 (statement)
Kirby, David	7682, 7687
Kleindienst, Richard G.	7539, 7541, 7555, 7613, 7633
Knight, Frances G.	7562, 7572
Koen, Charles	7683, 7686
Krause, Ruth	7682, 7685

L

Lacoste, Yves	7667
Laird, Melvin	7653, 7666
Laub	7605
Lawson	7548
Lawson, Phillip (Phil)	7683, 7687, 7689, 7690, 7692
Lester, Julius	7682, 7687, 7692
Lewis, Anthony	7645
Linebarger, Paul M. A.	7597, 7636
Lord Haw Haw. (See Joyce, William.)	
Lynd (Staughton)	7689

¹ Misspelled "Abby" in this reference.

M

	Page
Manes, Hugh R.....	7682, 7684
Maroney, Kevin T.....	7541, 7542
Marshall.....	7547
Marshall, George C.....	7637, 7638
Marshall, S.L.A.....	7559, 7581, 7600-7602 (testimony), 7637, 7638
McGovern, George.....	7619, 7648, 7653
Meerloo, Joost A. M.....	7590
Meyers, William.....	7683, 7685
Miller, Arthur.....	7653, 7671
Montgomery, G. V. (Sonny).....	7610-7612 (testimony)

N

Newton, Huey P.....	7679
Ngo Dinh Diem.....	7656, 7662
Nguyen Duy Phuc.....	7644
Nguyen Duy Trinh.....	7640, 7658, 7678
Nguyen Phu Soai.....	7644
Nguyen Thai Binh.....	7589, 7663
Nguyen Thi Binh (Madam Binh).....	7643
Nguyen Van Thieu.....	7587, 7656, 7661
Nixon, Richard M.....	7587,
	7588, 7619, 7650, 7651, 7653, 7655, 7657, 7661, 7667, 7670, 7671, 7675,
	7676

O

Olson, A. William.....	7539,
	7541, 7542-7562 (testimony), 7612-7615 (testimony), 7625, 7634

P

Page, Clarence.....	7588
Parker, Keith.....	7683
Parker, (Zeus) A.....	7687
Peck, Sidney.....	7683, ¹ 7687, ¹ 7690
Pershing, John J.....	7637
Pinckney, Charles.....	7543, 7627
Plemianniicov, Roger Vadin. (See Vadin, Roger.)	
Plemiannikov (Plemianniicov), James Seymour. (See Fonda, Jane Seymour.)	
Powell.....	7632

R

Randerport, Rudy.....	7686
Rappaport, Randy.....	7683
Rice, Charles Donald.....	7687
Rice, Charles E.....	7621, 7622-7624 (statement)
Rogers, William P.....	7564, 7565
Roosevelt (Franklin D.).....	7655
Rubin, Jerry.....	7548, 7551
Rumble, Wesley.....	7689

S

Sanders, Donald G.....	7543, 7566, 7572, 7625, 7672, 7682, 7688
Scheer, Robert.....	7683, 7685
Scherle, William J. (statement).....	7617
Schmitz, John G.....	7606
Seeger, Pete.....	7683, 7691, 7692

¹ Misspelled "Sydney" in this reference.

	Page
Seeger, Toshi (Mrs. Pete Seeger)-----	7691
Smith, Richard E-----	7687
Stafford, Elizabeth-----	7682, 7692
Sumi, Hideko (Pat)-----	7683, 7686, 7690
Summi, Pat-----	7686

T

Taylor, Leo-----	7682, 7684
Thach, Joseph E-----	7605, 7636, 7672, 7682, 7688
Thieu. (See Nguyen Van Thieu.)-----	
Thompson, Fletcher-----	7606, 7634
Thoraval, Jean-----	7639
To Huu-----	7664
Tokyo Rose. (See D'Aquino, Iva Toguri.)-----	
Truman, Harry S-----	7587, 7630, 7655
Trung Hi-----	7662
Trung Trac-----	7662

V

Vadim, Roger (Roger Vadim Plemianniicov)-----	7576
---	------

W

Wald, George-----	7683, 7691
Watson, Francis M., Jr.-----	7559, 7581, 7597-7600 (testimony), 7635, 7637
Wefers, Mark-----	7683, 7686, 7687
Weinglass, Leonard-----	7681
Weiss, Cora-----	7575
Westover, Martha-----	7683, 7686
Williams, Robert-----	7682, 7684, 7687, 7692
Wilson, Dagmar-----	7682, 7685
Woodward, John-----	7683, 7686

Z

Zion, Roger H-----	7606
--------------------	------

ORGANIZATIONS

A

American Deserters Committee (ADC)-----	7683
American Friends Service Committee. (See entry under Religious Society of Friends.)	

B

Black Anti-war Anti-Draft Union----- ¹	7685, 7689
Black Panther Party (BPP)-----	7618, 7680, 7689, 7690

C

Cases:

<i>Best v. United States</i> -----	7544
<i>Burgman v. United States</i> -----	7545
<i>Butlyer v. United States</i> -----	7546
<i>Chandler v. United States</i> -----	7544
<i>Cramer v. United States</i> -----	7544, 7545, 7628
<i>D'Aquino v. United States</i> -----	7545
<i>Dayton v. Dulles</i> -----	7622
<i>DeLaney v. United States</i> -----	7542
<i>Dunne v. United States</i> -----	7545, 7546, 7549
<i>Edwards v. United States</i> -----	7624
<i>Ex parte Bollman</i> -----	7547, 7628
<i>Gillars v. United States</i> -----	7544
<i>Hartzel v. United States</i> -----	7546, 7552, 7631, 7632

Cases—Continued

	Page
<i>Kent v. Dulles</i> -----	7622
<i>Lynd v. Rusk</i> -----	7574, 7613, 7618, 7621, 7623, 7751-7760
<i>Opper v. United States</i> -----	7546
<i>Schenek v. United States</i> -----	7545, 7546, 7549, 7550, 7630, 7631
<i>Stephan v. United States</i> -----	7544
<i>Travis v. United States</i> -----	7620
<i>United States v. Curtiss-Wright Export Corporation</i> -----	7624, 7628
<i>United States v. Greathouse</i> -----	7544, 7627
<i>United States v. Krafft</i> -----	7546
<i>United States v. Laub</i> -----	7575, 7605, 7609, 7613, 7620, 7623, 7735-7750
<i>United States v. Pelly</i> -----	7546
<i>United States v. Powell</i> -----	7629, 7632
<i>United States v. Robinson</i> -----	7544, 7628
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> -----	7624
<i>Zemel v. Rusk</i> -----	7560, 7574, 7605, 7613, 7621, 7622, 7623, 7695-7734
Central Committee for Conscientious Objectors-----	7692
Communist Party of the United States of American (CPUSA)-----	7586, 7689
National Structure:	
Executive Committee-----	7689
Court Cases. (See Cases.)	
D	
DRV. (See Vietnam, Government of, Democratic Republic of Vietnam (North Vietnam).)	
F	
FLN. (See National Liberation Front.)	
FTA (Free the Army)-----	7641, 7679
I	
INS. (See United States Government, Justice, Department of, Immigration and Naturalization Service.)	
International Commission for Inquiries into the U.S. war crimes in Indochina -----	7619
L	
Liberation Press Agency-----	7643
Liberation Radio-----	7643, 7684
M	
Movement for a Democratic Military (MDM)-----	7690
N	
National Liberation Front (FLN)-----	7598
National Student Association (NSA)-----	7690
New Mobe. (See New Mobilization Committee to End the War in Vietnam.)	
New Mobilization Committee to End the War in Vietnam (New Mobe) Executive Committee-----	7690
O	
Organization of American States:	
Ninth Meeting of Consultation of Ministers of Foreign Affairs, July 21-26, 1964, Washington-----	7564
Twelfth Meeting of Ministers of Foreign Affairs, September 1967-----	7564
R	
Radio Hanoi-----	7540, 7572, 7585, 7604, 7605, 7619, 7633, 7634, 7639, 7640, 7672, 7682, 7688, 7689, 7691
Radio Stateside (Los Angeles)-----	7682, 7692
Religious Society of Friends:	
American Friends Service Committee-----	7670

S

Page

SDS. (<i>See</i> Students for a Democratic Society.)	
Special Committee to Study Passport Procedures of the Association of the Bar of the City of New York	7623
Student Nonviolent Coordinating Committee	7684
Students for a Democratic Society (SDS)	7618, 7685

U

United States Government	7580, 7581
Bureau of the Budget	7621
Defense, Department of	7610
Immigration and Naturalization Service. (<i>See</i> entry under Justice, Department of.)	
Justice, Department of	7539-
7542, 7547, 7548, 7552-7563, 7574, 7575, 7604, 7605, 7613, 7615, 7616, 7619, 7633-7635	
Federal Bureau of Investigation	7542
Immigration and Naturalization Service (INS)	7561, 7564, 7576
Internal Security Division	7541, 7615
State, Department of	7558,
7561-7566, 7568, 7570, 7573, 7574, 7577, 7579, 7580, 7604, 7610, 7613, 7615, 7616, 7618-7621	
Bureau of Security and Consular Affairs	7577
Passport Office	7561, 7562, 7568, 7572, 7573, 7576-7578, 7605
United States Information Agency:	
Voice of America	7582

V

Venceremos Brigade	7616, 7618
Vietnam Committee of Solidarity with the American People	7640,
7658, 7678, 7691	
Vietnam Day Committee	7692
Vietnam, Government of:	
Democratic Republic of Vietnam (North Vietnam) (DRV)	7640, 7658
Vietnam Veterans Against the War (VVAW)	7679, 7691, 7693
Vietnam Workers Party	7640, 7658
Vietnamese Film Artists Association	7640, 7658
Voice of America. (<i>See</i> entry under United States Government, United States Information Agency.)	
Voice of Vietnam Radio	7644, 7645, 7676, 7686, 7691

W

Women Strike for Peace	7685
World Conference of Journalists Against U.S. Imperialism, Pyongyang, North Korea	7618

Y

Young (Communist) Workers Liberation League (YCWLL) (also known as Young Workers Liberation League (YWLL))	7689
Young Workers Liberation League (YWLL). (<i>See</i> Young (Communist) Workers Liberation League (YCWLL).)	

PUBLICATIONS

Draft, The (book)	7670
Freedom to Travel, The (report)	7623
Night Flight to Hanoi (book) (Berrigan)	7580
Pentagon Papers	7587
People's Peace Treaty	7690

RESTRAINTS ON TRAVEL TO HOSTILE AREAS

SEPTEMBER 28, 1972.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ICHORD, from the Committee on Internal Security,
submitted the following

REPORT

together with

A DISSENTING VIEW

[To accompany H.R. 16742]

The Committee on Internal Security, to whom was referred the bill (H.R. 16742) to amend section 4 of the Internal Security Act of 1950, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 2, line 9, strike out “(c) through (f), as (d)” and insert in lieu thereof “(d) through (f) as (e)”.

The committee amendment merely corrects a technical error in subsection (b).

PURPOSE OF THE BILL

The President's existing authority to impose area travel restrictions as an instrument for the conduct of the Nation's foreign affairs is not enforceable because of the absence of penal sanctions. The bill would authorize penal sanctions in support of restraints on travel to countries engaged in armed conflict with the United States.

The bill, H.R. 16742, would amend section 4 of the Internal Security Act of 1950 by adding a new subsection thereto which would authorize the President to restrict travel by citizens and nationals of the United States to, in, or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States. By the terms of the bill, travel to any such restricted area may be authorized by the President when he deems it to be in the national interest. Travel without authorization to such restricted areas is made subject to the penal sanctions now provided by section 4(d) of the Internal Security Act of 1950. It would thus be punishable

by a maximum fine of \$10,000 or imprisonment for 10 years, or by both such fine and imprisonment, and persons committing such violation shall thereafter be ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

The authority conferred on the President by the terms of the bill is delegable to the Secretary of State (or to the head of any department or agency in the executive branch) pursuant to the provisions of title 3, U.S.C., sections 301-303.

NECESSITY FOR LEGISLATION

As was pointed out by the Court in *United States v. Laub*, 385 U.S. 475, at 486 (1967) :

The Government, as well as others, has repeatedly called to the attention of the Congress the need for consideration of legislation specifically making it a criminal offense for any citizen to travel to a country as to which an area restriction is in effect, but no such legislation was enacted.

We need not detail the persistent efforts to enact legislation of this type. It is perhaps sufficient to say that in recent years the failure to heed this call has been underscored by the Government's inability to control travel to restricted areas such as Cuba and North Vietnam. While the Government retains its authority to withhold passports or to refuse to validate passports for travel to restricted areas pursuant to the provisions of the Passport Act of 1926 [22 U.S.C. 211a], and has been authorized under certain circumstances to prohibit a departure from the United States without a passport pursuant to the provisions of the Immigration and Nationality Act of 1952 [8 U.S.C. 1185(b)], it remains unable to apply penal sanctions for unauthorized travel to, in, or through restricted areas.

This failure has seriously and adversely affected the Nation's security interests. A vast body of information has been developed by this committee and other committees of the Congress which reveals that a substantial number of United States citizens have traveled abroad to hostile areas and have there engaged in a variety of activities which necessarily give aid and encouragement to the enemy and have the effect of causing serious damage to the interests of the United States. The cumulative effect of such activities cannot be ignored. The recent travel of Jane Fonda to Hanoi, only one of a series of similar events, must thus be a matter of concern. Such activities—as her broadcasts from the enemy's territory to our forces in the field—have an obvious tendency to undermine the morale of our forces. As described for this committee by several experts in psychological warfare, they can have no other result than to advance the enemy's interests at the expense of our own. We may well see their continuance on an ever-increasing scale, unless notice is taken of such conduct and steps taken to prevent it.

Even to the superficial observer it must seem evident that neither the patience nor the tolerance of the vast number of our citizens should be tested by any further postponement in the enactment of necessary legislation designed to cope with activities which are of

positive harm to our national efforts. We are convinced that the proposed legislation will not only fill a broad gap in the Nation's protective armor, but will demonstrate our will to persevere in maintaining vital national policies while at the same time allaying those misapprehensions now shared by many of our patriotic citizens as to the capacity of the Government to fulfill its mission.

The power of Congress to enact the proposed legislation is no longer open to question. That the President of the United States and the Congress, acting together (and thus in this respect exercising the total powers of a sovereign state), may validly impose such travel restraints in the regulation of the Nation's foreign affairs, independently even of a state of war, is the effect and purport of the most recent decisions of the judicial branch on this subject. *Zemel v. Rusk*, 381 U.S. 1 (1965), and *United States v. Laub*, 385 U.S. 475 (1966). See also *Lynd v. Rusk*, 389 F. 2d 940 (1967). Earlier indeed, the U.S. Court of Appeals for the District of Columbia Circuit, in three noteworthy cases, supported the propriety of the practice as a power vested in the President apart from statute and derived from his constitutional duty to conduct the foreign affairs of the United States. In these cases—*Worthy v. Herter*, 270 F. 2d 905 (1959); *Frank v. Herter*, 269 F. 2d 245 (1959); and *Porter v. Herter*, 278 F. 2d 280 (1960)—the Presidential restraints on travel, then in effect with respect to portions of China, Korea, and Vietnam under Communist control, and a restriction against travel in Hungary, were upheld by unanimous courts. In all three cases certiorari was denied by the U.S. Supreme Court (361 U.S. 918).

What controversy has existed on the subject had its inception in the cold (-hot) war period after Yalta. It was directed principally to a system of "individual restraints" on travel, as distinguished from a system of "area restraints," by which the Congress and the executive endeavored to control the travel abroad of certain individuals on the basis of characteristics peculiar to them rather than travel to particular places because of foreign policy considerations affecting all citizens. In September of 1950, shortly following the Communist invasion of South Korea, the Congress enacted provisions to control the travel of Communists by making it unlawful to issue passports to them. It did so in the provisions of section 6 of the Internal Security Act of 1950 which made it unlawful for any officer or employee of the United States to issue passports to members of Communist-action and Communist-front organizations as defined in the Act, and made it unlawful for such persons to apply for or use such passports. In September of 1952, broader regulations were likewise promulgated by the Secretary of State intended to encompass and prohibit the issuance of passports to all persons "who support the world Communist movement," and to assure that they do not, through the use of U.S. passports, further the purposes of the movement by travel abroad. These regulations required an applicant for passport to subscribe under oath or affirmation to a statement with respect to present or past membership in the Communist Party, and if an applicant stated that he was "a Communist," his passport was to be refused without further proceedings.

In June of 1958 the September 1952 passport regulations were struck down in *Kent and Briehl v. Dulles*, 357 U.S. 116, and *Dayton v.*

Dulles, 357 U.S. 144, on the ground that the Secretary's regulations were not specifically authorized by the Congress. Subsequently, in June of 1964, the prohibitions of section 6 of the Internal Security Act of 1950 were struck down in *Aptheker v. Secretary of State*, 378 U.S. 500, as overly broad, the Court declaring that they swept "too widely and too indiscriminately across the liberty guaranteed in the Fifth Amendment." In *Zemel v. Rusk*, *supra*, such individual restraints have been broadly distinguished from those area restraints which it has upheld.

However, the adoption of the Act of 1950 and of the Secretary's September 1952 regulations had stimulated widespread interest and debate, including a study of the issues undertaken by a Special Committee of the Association of the Bar of the City of New York. The association's report, completed in the spring of 1958 at approximately the time when the Kent, Briehl, and Dayton cases had been set down for argument before the Supreme Court of the United States, was deferred until those decisions were handed down so as to permit proper recognition to be given to the opinions of the Court. The Special Committee made a number of recommendations, both with respect to principles which should govern the imposition of individual restraints, and principles which should control "area restrictions on travel." It concluded "that the authority to prohibit travel by all U.S. citizens in areas designated by the Secretary of State is a necessary instrument to advance the national interest, and it recommends legislation to clear up any doubts as to the possession by the Secretary of State of such authority."

Included within illustrations of the types of conditions in which the Secretary of State would, in the judgment of that committee, be justified in invoking this power, the following were cited:

(1) When Italy invaded Ethiopia, the ban could have been imposed on travel to Italy, as the primary target of the disapproval of the United States. The same could have applied when Japan invaded China. And the same could also apply as a measure directed against any nation, as a deterrent to aggression. In such conditions, it would be a tool of foreign policy similar to an embargo on the shipment of arms or materials critical for war.

(2) When hostilities are threatened or in force, and the United States means to bring its pressure to bear to subdue them or to avoid involvement by the United States.

It was the further conclusion of that committee that it had not "discovered" any statute which clearly provides a penalty for violation of area restrictions, that this was a glaring omission, and it was of the view that a knowing violation of valid restrictions should certainly be subject to an effective sanction, which is not now the case.

Moreover, less than a month following the decisions in the Kent, Briehl, and Dayton cases, President Eisenhower sent a message to the Congress requesting enabling legislation in which he said:

To the Congress of the United States:

Since the earliest days of our Republic, the Secretary of State has had the authority to issue or deny passports. His-

torically this authority stems from the Secretary's basic responsibilities as the principal officer of the President concerned with the conduct of foreign relations. Congress has over a period of years given the Secretary of State certain additional statutory authority in the field.

In recent years the Secretary of State has based his limitation of passports on two general grounds. The first of these has been that an applicant's travel, usually to a specific country or countries, was inimical to United States foreign relations. The second of the general grounds of denial has been that the applicant is a member of the Communist Party; is under Communist Party discipline, domination, or control; or that the applicant is traveling abroad to assist knowingly the international Communist movement.

Recently the Supreme Court limited this power to deny passports under existing law. It is essential that the Government today have power to deny passports where their possession would seriously impair the conduct of the foreign relations of the United States or would be inimical to the security of the United States.

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I wish to emphasize the urgency of the legislation I have recommended. Each day and week that passes without it exposes us to a great danger. I hope the Congress will move promptly toward its enactment.

Although the President submitted proposed legislation to the 85th Congress, it was not enacted. Nor has any of a number of bills on this subject, submitted in subsequent administrations, found favor with the Congress. We believe that the legislation now proposed in the terms of H.R. 16742 would fill an urgent requirement.

COMMITTEE ACTION

The bill, H.R. 16742, was introduced on September 20, 1972, by Mr. Ichord, chairman of the House Committee on Internal Security, for himself, Mr. Ashbrook, Mr. Davis of South Carolina, Mr. Thompson of Georgia, Mr. Schmitz, and Mr. Zion, following the committee's inquiry into the failure of prosecution of the actress, Jane Fonda, for activities in connection with her travel to North Vietnam in July of this year. Mr. Thompson had called for Fonda's appearance before the committee, and asked that an inquiry be made into the circumstances underlying her appearance in Hanoi. A review of her activities suggested that there might exist probable cause for prosecution under existing treason and sedition statutes, as well as the Logan Act. The question was also raised as to whether laws and regulations relating to the issuance and use of passports and restrictions on travel had been violated.

Inquiry was made on the subject both of the Department of Justice and of the Department of State. On September 19, 1972, the committee heard representatives of the Attorney General's office and of the Passport Office, Department of State. The Honorable A. William Olson,

Assistant Attorney General, Internal Security Division, Department of Justice, appearing on behalf of the Department, advised the committee that it would be "inappropriate" for him to comment on the reported activities of Jane Fonda in North Vietnam "since that is a matter presently under active consideration in the Department." It might well be inferred from his testimony that there were serious evidentiary difficulties, as well as other considerations, which would make it unlikely that a prosecution would be instituted under either the treason and sedition statutes, or under the Logan Act. The Honorable Robert Johnson, Deputy Director and Chief Counsel of the Passport Office, informed the committee that his office had not been able to find any criminal violation of laws or regulations governing the issuance and use of passports, or of existing restraints on travel. Hence, he said, his office has made no recommendation for prosecution. Both witnesses, however, expressed the view that legislation along lines proposed in the pending bill would be useful and necessary to enforce travel restrictions.

Following introduction of the bill, a meeting of the full committee was called for Monday, September 25, 1972, for the purpose of hearing further testimony, to consider the bill H.R. 16742, and to report a measure to the House. The committee accordingly met on Monday, September 25, 1972, and received testimony and statements from a number of witnesses. Representatives Charles E. Bennett and G. V. (Sonny) Montgomery appeared in support of the bill. A. William Olson, Assistant Attorney General, Internal Security Division, Department of Justice, expressed the views of the Department on the measure. The Department's views are submitted with this report. Statements in support of the measure were also received from Representatives Carlton J. King, William J. Scherle, and Louis Frey, Jr. Charles E. Rice, professor of constitutional law, Notre Dame University, who advised the committee on constitutional issues, found no objection to the measure on constitutional grounds.

Thereafter the committee met in executive session for the consideration of the bill H.R. 16742. The following members were in attendance:

Mr. Ichord
Mr. Pepper
Mr. Preyer
Mr. Davis

Mr. Zion

Mr. Ichord called the bill up for consideration and moved the following technical amendment:

Page 2, line 9, strike out "(c) through (f), as (d)" and insert in lieu thereof "(d) through (f) as (e)".

The amendment was agreed to. Thereupon Mr. Pepper moved that the bill be reported as amended and his motion was seconded by Mr. Zion. The roll was called and the response on the motion was as follows:

Mr. Ichord—Aye
Mr. Pepper—Aye
Mr. Preyer—Aye
Mr. Davis—Aye

Mr. Zion—Aye

So it was agreed to report the bill as amended.

ESTIMATE OF COSTS

In compliance with the requirement of House rule XIII, clause 7, the committee estimates, and the Department of Justice advises, that no additional costs are anticipated in carrying out the bill, H.R. 16742, in this fiscal year in which it is reported, and in each of the 5 fiscal years following.

VIEWS OF THE DEPARTMENT OF JUSTICE

STATEMENT OF A. WILLIAM OLSON, ASSISTANT ATTORNEY GENERAL,
INTERNAL SECURITY DIVISION

September 25, 1972

Mr. Chairman and members of the Committee, I am pleased to appear before the Committee to present the views of the Department of Justice concerning H.R. 16742, a bill to restrict travel by citizens and nationals of the United States to any country or area whose military forces are engaged in armed conflict with the military forces of the United States.

H.R. 16742 would authorize the President to institute such restrictions through an announcement which shall be published in the Federal Register. Travel to such restricted country or area would then be unlawful unless the traveler had been authorized by the President to so travel after a determination that such travel was in the national interest. Substantial criminal sanctions are provided for United States citizens and nationals who violate the restriction.

Mr. Chairman, as you know, the Department has for many years supported efforts to provide appropriate and effective travel control legislation. The problem became particularly apparent in 1967 when the Supreme Court in *United States v. Laub*, 385 U.S. 475, held that travel to a restricted area with an otherwise valid passport was not punishable under Section 1185(b) of Title 8, United States Code. The power to prescribe area restrictions had previously been sustained in *Zemel v. Rusk*, 381 U.S. 1 (1965), which sanctioned the Secretary of State's refusal to validate a citizen's passport for travel to Cuba.

Although the Secretary may request a criminal prosecution under 18 U.S.C. 1544, for use of a passport in violation of the restrictions contained therein, it is, as a practical matter, almost impossible to obtain sufficient evidence of such violation to sustain a prosecution under that law. The only other action which the Secretary might possibly take is to deny or revoke a passport when the sole travel intended is to a restricted area (*Lynd v. Rusk*, 389 F. 2d 940, D.C. Cir. 1967). The narrow scope of this action is inadequate to deter such travel by persons who are so inclined. Consequently, area restrictions today are ineffective since the Secretary has no realistic means of enforcing them.

As you know, Mr. Chairman, numerous bills have been introduced in the Congress over the years aimed at plugging this loophole in the law. H.R. 14428, in the 90th Congress, was a bill, drafted in the Department of State with the assistance of the Department of Justice, which would have accomplished this purpose. The Department reported favorably on that bill on March 5, 1968. In the last Congress, the Department reported on H.R. 383 and H.R. 14893. These bills, "to

restrict travel in violation of area restrictions", were substantially identical to H.R. 14428, mentioned previously, except that the caption had been changed and the penalty increased from a misdemeanor to a felony. Mr. Kleindienst, then Deputy Attorney General, in his letter report of July 16, 1970, stated that the Department "strongly supports" this kind of legislation.

H.R. 16742, the bill before this Committee today, differs from H.R. 383 and H.R. 14893 in many details, but the basic substance is the same. We prefer the broader coverage of the latter bills, which would authorize restrictions to a country or area that is—

- (1) a country or area which is at war,
- (2) a country or area where insurrection or armed hostilities are in progress,
- (3) a country or area whose military forces are engaged in armed conflict with forces of the United States, or
- (4) a country or area to which travel must be restricted in the national interest because such travel would seriously impair the conduct of United States foreign policy.

Further, we would prefer that the authority to designate restricted countries or areas and to grant travel exceptions be given directly to the Secretary of State, although presumably it is intended that the President's authority under H.R. 16742 could be delegated.

In summary, while we would prefer the broader coverage and other details of previously mentioned bills, we nevertheless strongly support the purpose of H.R. 16742 and the goal which it would attain.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Section 4 of the Internal Security Act of 1950

CERTAIN PROHIBITED ACTS

SEC. 4. (a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, as defined in paragraph (15) of section 3 of this title, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual: *Provided, however,* That this subsection shall not apply to the proposal of a constitutional amendment.

(b) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or

employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

(c) It shall be unlawful for any agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(d) The President may restrict travel by citizens and nationals of the United States to, in, or through any country or area whose military forces are engaged in armed conflict with the military forces of the United States. Such restriction shall be announced by public notice which shall be published in the Federal Register. Travel to such restricted country or area by any person may be authorized by the President when he deems such travel to be in the national interest. It shall be unlawful for any citizen or national of the United States willfully and without such authorization to travel to, in, or through any country or area to which travel is restricted pursuant to this subsection.

[(d)] (e) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

[(e)] (f) Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after the commission of such offense, notwithstanding the provisions of any other statute of limitations: *Provided*, That if at the time of the commission of the offense such person is an officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, such person may be prosecuted, tried, and punished for any violation of this section

at any time within ten years after such person has ceased to be employed as such officer or employee.

[(f)] (g) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute.

DISSENTING VIEW OF CONGRESSMAN ROBERT F. DRINAN

The bill is captioned "Restraints On Travel to Hostile Areas," a title which would seem to suggest that those of us who care about civil liberties are once again being restrained from traveling to the mountainous files of the Internal Security Committee (HISC).

Before I set forth my main objections to this ill-conceived, ill-considered, and unconstitutional proposal, I think my colleagues are entitled to an explanation of why, in the body of this Report, my vote in opposition is not recorded.

At 5:43 p.m. on Friday, September 22, my office receptionist received a telephone call from a HISC staff member who indicated that the chairman had decided to hold a hearing on this bill Monday morning, September 25, at 11:00 a.m. A 45-minute hearing was held, several witnesses (all favorable to the bill) spoke, the committee proceeded directly into executive session, a vote was taken, and the committee adjourned by 12:20 p.m.

At the very moment the sudden vote was taken, I was speaking on the floor of the House on the critically important subject of release of American prisoners of war—a subject about which all of us are deeply concerned; indeed, a subject intimately connected to this bill.

Immediately after speaking, I raced back to the committee room, only to be told that the vote had been taken in my absence.

Thus, in less than an hour and a half, HISC held its hearings, mark-up, committee discussion, and vote on this bill—a bill on a matter of very substantial constitutional complexity, of grave social consequences, and of high controversy in our nation.

In its characteristic way, HISC made it virtually impossible for critical witnesses to appear. In its characteristic way, HISC once again flouted the rules of the House, in this case rule XI(f)(1), which provides:

Each committee of the House (except the Committee on Rules) shall make public announcement of the date, place and subject matter of any hearing to be conducted by the committee on any measure or matter at least one week before the commencement of that hearing, unless the committee determines that there is good cause to begin such hearing at an earlier date. If the committee makes that determination, the committee shall make such public announcement at the earliest date.

This bill is absolutely not within the jurisdiction of HISC. For years, pursuant to House rules and traditions, the Judiciary Committee has exercised thoughtful and impartial jurisdiction over passport-

related legislation. Legislation similar to H.R. 16742 was referred to the Judiciary Committee in the 90th Congress (H.R. 14428), the 91st Congress (H.R. 383 and H.R. 14893), and the 92d Congress (H.R. 16488), for example.

HISC's jurisdictional mandate simply does not reach all around the world. It does not reach into Indochina. It does not reach into the Passport Office. And it does not reach into the established and long-exercised jurisdiction of our Judiciary Committee.

This bill is unconstitutional on a number of grounds, perhaps most importantly its proposed deprivation of the right to travel without provision of substantive or procedural due process. As the Supreme Court has stated in *United States v. Laub*, 385 U.S. 475, 481 (1967), *Zemel v. Rusk*, 381 U.S. 1 (1965), *Aptheker v. Dulles*, 378 U.S. 500, 517 (1964), *Kent v. Dulles*, 357 U.S. 116, 125, (1958), and elsewhere:

The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law.

Some people have called this "the Jane Fonda bill." I call it the "Anthony Lewis bill" after the prize-winning New York Times reporter whose informative dispatches from Hanoi gave the American people a rare insight into the nature of the calamitous injury we are inflicting on Indochina. This bill would prevent Anthony Lewis and Richard Dudman of the St. Louis Post Dispatch and John Hart of CBS and all of their colleagues from reporting the news from Hanoi as they see it.

Haven't we learned the lesson, even after the Pentagon Papers, that when the Government is the only source of news the people are told lies and half truths?

And what about the implications of the United Nations Universal Declaration of Human Rights, to which we are a party (not to speak of our own Bill of Rights) on this bill? That basic international agreement states in Article 13:

1. Everyone has the right of freedom of movement and residence within the borders of each state.

2. Everyone has the right to leave any country, including his own, and to return to his country.

When the Soviet Union, also a signator of the Universal Declaration, violates that provision, as it most certainly has in the cases of the more than 150,000 Soviet Jews who seek to go to Israel, Congressmen and the people of the United States are justifiably outraged.

Israel and North Vietnam are very different. But before we pass such a bill as this, let us consider the rationale of the Soviet Union in refusing to allow Jews to travel.

The Russian journalist-diplomat, Victor Louis, in a dispatch from Moscow (New York Times, Op Ed, September 7, 1971) defended the persistent Soviet refusal to allow Jews to travel on the ground that Israel was the enemy of the Soviet Union. He argued that Russia could not so treat its enemy and the enemy of its Arab allies.

Now, through this bill, the United States would prevent its citizens not from emigrating to North Vietnam, but from merely visiting that country.

We cannot consistently speak out against the Soviet freeze on the right of Jews to move about and at the same time support this bill.

If any American citizen or resident commits treasonous acts in North Vietnam or anywhere else, the Department of Justice should and will prosecute. The laws of treason are fully adequate to the needs of our nation.

This is not an anti-treason bill. It is an anti-free travel bill. It is an anti-free speech bill. It is a bill consistent with the anachronistic cold war views of HISC. But most of all, it is a political bill. It was born in old-fashioned stump politics and the appeals to emotion typically associated with election-year politicking. Calm, reason, and more than one and a half hours of consideration are warranted—in fact, they are indispensable to the passage of sound legislation.

ROBERT F. DRINAN.



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